

No. 10,082

14
United States
Circuit Court of Appeals

For the Ninth Circuit. Vol
2324

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GERMAIN SEED AND PLANT COMPANY,
a corporation,

Respondent.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 476


Upon Petition for Enforcement of an Order
of the National Labor Relations Board

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of the National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT 1-B

United States of America
Before the National Labor Relations Board
21st Region

Case No. XXI C 1512

Date filed 10/26, 1940

1 inv.

In the Matter of

GERMAIN SEED & PLANT COMPANY

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF AMERICA,
LOCAL No. 595, A. F. L.

CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed & Plant Company, 747 Terminal St., Los Angeles, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

On October 25, 1940, it, by its officers, agents and employees terminated the employment of C. J. Loy, order clerk, because of his membership and activities in behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, a labor organization,

and at all times since such date it has refused and does now refuse to employ the above named employee.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS,
CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF
AMERICA, LOCAL No. 595

By: RALPH WOOLPERT,
Assistant Rep.
730 South Grand Ave.,
Los Angeles, Calif.

Subscribed and sworn to before me this 26 day
of October, 1940 at Los Angeles, Calif.

GEO. A. YAGER

National Labor Relations Board
U. S. Post Office & Court House
Bldg.
Los Angeles, California.

BOARD'S EXHIBIT 1-C

[Title of Board and Cause.]

Date filed 11/12, 1940

275 inv.

AMENDED CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed and Plant Company, 747 Terminal St., Los Angeles, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that

In September, 1937 the Germain Seed & Plant Company, by its officers, agents and employees, did form and sponsor the Consolidated Seedmen's Union, Inc. and did dominate and interfere with the administration of the said Consolidated Seedmen's Union, Inc.

And on October 25, 1940 it, by its officers, agents and employees, terminated the employment of C. J. Loy, order clerk, because of his membership and activities in behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, a labor organization, and at all times since such date it has refused and does now refuse to employ the above named employee.

By the acts set forth in the paragraphs above and by other acts and conduct, it, by its officers,

agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS,
CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF
AMERICA, LOCAL No. 595

By: RALPH WOOLPERT

Assistant Representative
730 South Grand Ave., Los
Angeles, Calif
VA 0831

Subscribed and sworn to before me this 12th day
of November, 1940 at Los Angeles, Calif.

JOSEPH D. GOULD,
Field Examiner
National Labor Relations
Board
U. S. Post Office & Court
House Bldg.
Los Angeles, California

BOARD'S EXHIBIT 1-D

[Title of Board and Cause.]

Date filed 1/10 1941

275 inv.

SECOND AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed and Plant Company, 747 Terminal St., Los Angeles, California, Merchants and Manufacturers' Association, 725 So. Spring St., Los Angeles, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that in September, 1937, the Germain Seed and Plant Company and the Merchants and Manufacturers' Association of Los Angeles, acting directly and indirectly in the interest of said Germain Seed & Plant Company, by their officers, agents and employees, form, sponsored, dominated and interfered with the administration of a labor organization known as the Consolidated Seedmen's Union, Inc., and at all times since that date have dominated and interfered with the operation and administration of said Consolidated Seedmen's Union, Inc.

And on October 25, 1940, it, by its officers, agents and employees, terminated the employment of C. J. Loy, order clerk, because of his membership and activities in behalf of the International Brother-

hood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, a labor organization, and at all times since such date it has refused and does now refuse to employ the above named employee.

By the acts set forth in the paragraphs above and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the mean of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF AMER-
ICA, LOCAL No. 595**

By **RALPH WOOLPERT,**

Assistant Representative, 730 South Grand
Ave., Los Angeles, Calif. TU 1543.

Subscribed and sworn to before me this 10th day
of January, 1941, at Los Angeles, Calif.

JOSEPH D. GOULD,

Field Examiner

National Labor Relations Board, 808 U. S. Post-
office & Courthouse Bldg., Los Angeles, California.

BOARD'S EXHIBIT 1-E

[Title of Board and Cause.]

Date filed Feb. 28, 1941

THIRD AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed and Plant Company, 747 Terminal Street, Los Angeles, Calif., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) of said Act, in that in September, 1937, the Germain Seed and Plant Company by its officers, agents and employees, formed, sponsored, dominated and interfered with the administration of a labor organization known as the Consolidated Seedmen's Union, Inc., and at all times since that date has dominated and interfered with the operation and administration of said Consolidated Seedmen's Union, Inc.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organiza-

tion, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF AMER-
ICA, LOCAL NO. 595, AFL

By R. W. WOOLPERT,

Assistant Representative.

730 S. Grand Avenue, Los Angeles, Calif.
TU. 1543.

Subscribed and sworn to before me this 28th day
of February, 1941, at Los Angeles, Calif.

JOSEPH D. GOULD,

Field Examiner, National Labor Relations Board,
808 U. S. Postoffice Bldg., Los Angeles, Calif.

BOARD'S EXHIBIT 1-F

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Brother-
hood of Teamsters, Chauffeurs, Warehousemen &
Helpers of America, Local No. 595, chartered by
American Federation of Labor, that Germain Seed
& Plant Company, hereinafter called "Respondent,"
has engaged in and is engaging in at Los Angeles,
California, certain unfair labor practices affecting
commerce, as set forth and defined in National La-
bor Relations Act, approved July 5, 1935, 49 Stat.
449, hereinafter referred to as "Act," the National

Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said National Labor Relations Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation, organized and existing under and by virtue of the laws of the State of California. Said Respondent has its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, and is engaged in the growing, buying, refining and sale of various types of seeds and bulbs and in the purchase and sale of insecticides, poultry and garden supplies and remedies and hardware, etc.

2. Respondent, in the course and conduct of its business just described, causes and continuously has caused large quantities of the above-mentioned products to be transported into and out of the State of California in interstate and foreign commerce from and to states of the United States other than said State of California, and foreign countries.

3. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 595, chartered by American Federation of Labor and hereinafter called "Union," and Consolidated Seedmen's Union, Inc., an unaffiliated labor organization, hereinafter called "Consolidated," are

labor organizations, and each of them is a labor organization within the meaning of Section (2), subsection (5) of the Act.

4. In or about August, September and October, 1937, and at all times thereafter up to and including the date of this Complaint, Respondent, acting through its officers, agents, servants, intermediaries and others, including without limitation, Manfred Meyberg, W. J. Schoenfeld, W. J. Sage, Dwight B. Gates, Woolcott Hill, A. Hook, C. R. Luck, D. G. Hatfield, Vivian J. Nesbit, Harold Frauenberger, all being supervisory employees of the Respondent, J. P. Voorhees, attorney, Viola B. Gates, John W. Butterfield, and Dorothy Turton, employees, dominated and interfered with the formation and administration of Consolidated and contributed support and assistance to it by setting it up at a time when several of its employees were indicating their interest in an affiliated labor organization through said Sage calling a meeting on Respondent's time and/or property in the warehouse at which meeting Sage advised the employees of the Respondent there assembled to form an unaffiliated labor organization on pain of the Respondent's otherwise ceasing its business, through Respondent thereafter posting a notice to its employees indicating unmistakably its hostility to its employees joining or otherwise participating in legitimate labor organizations, through said Sage, Nesbit and Frauenberger and others on Respondent's time and/or property thereafter open-

ly campaigning for the formation of an unaffiliated labor organization, through said Voorhees conducting meetings on Respondent's time and/or property at Respondent's warehouse and "Hill Street store" leading to the formation of Consolidated, through certain of Respondent's supervisory personnel attending and participating in the above-mentioned meetings, through the Respondent thereafter conducting on its time and/or property an election among its employees to determine their choice of a bargaining agent which was perforce Consolidated; by thereafter assisting Consolidated through allowing it the use of Respondent's facilities for the posting of bulletins and notices, Respondent's messenger system and other facilities; by controlling Consolidated at all times mentioned in this Complaint up to and including its date, through allowing and/or having individuals representing and acting in the interest of Respondent among the membership and leadership of Consolidated; by canalizing all collective bargaining efforts of its employees into Consolidated through according it in practice a virtual closed shop and by in September, 1940, advising certain of its employees that their requests for wage increases be made through Consolidated and by thereafter giving credit to Consolidated for the wage increases granted and by committing other acts of substantially similar nature and import.

5. By the commission of the acts set forth in the immediately preceding paragraph numbered "4" and by the commission of other acts of substantially

similar nature and import and by the commission of each of them, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

6. In or about August, September and October, 1937, and in or about September, October and November, 1940, and in the intervening period between the dates just mentioned and thereafter up to and including the date of this Complaint, Respondent, acting through said Meyberg, Schoenfeld, Hill, Nesbit and others, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act by committing the acts above set forth in the Paragraph numbered "4"; in or about September and/or October, 1940, at a time when the several of its employees had signified their interest in the Union as their bargaining agent, by announcing and putting into effect general wage increases; through said Meyberg, Hill and others by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union and by uttering remarks disparaging to said Union and by committing other acts of substantially similar nature and import.

7. By the commission of the acts set forth in the preceding paragraphs numbered "4" and "6" and by the commission of other acts of substantially similar nature and import and by the commission of each of them, Respondent has engaged in and is

engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

8. The acts of Respondent set forth in the preceding paragraphs numbered "4" and "6", occurring in connection with the operation of its business as described in the preceding paragraphs numbered "1" and "2" have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

9. The acts of Respondent set forth in the preceding paragraphs numbered "4" and "6" constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (2) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of April, 1941, issues its Complaint against Germain Seed & Plant Company, Respondent herein.

NOTICE OF HEARING

Please Take Notice That on the 17th day of April, 1941, in Room 808, U. S. Post Office and Court House Building, Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with Article IV and Article II, Section 23 of its Rules and Regulations, Series 2, as

amended, on the allegations of the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You Are Further Notified that you have the right to file with the undersigned, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 17th day of April, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations, Series 2, as amended.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by its Regional Director for its Twenty-first Region on the 5th day of April, 1941.

(Seal)

WALTER P. SPRECKELS,
Regional Director, Twenty-
first Region
National Labor Relations
Board
808 U. S. Post Office &
Court House
Los Angeles, California

April 5, 1941

I hereby acknowledge personal service of an exact and true copy of the within document.

**GERMAIN SEED & PLANT
COMPANY**

By LATHAM & WATKINS,

Its Attorneys.

By PAUL R. WATKINS.

**CONSOLIDATED SEEDMEN'S
UNION, INC.**

By A. HOOK,

Pres. Elect.

**INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS,
CHAUFFEURS, WARE-
HOUSEMEN & HELPERS
OF AMERICA, LOCAL No.
595, AFL**

By DONALD E. JOHNSON

Business Rep.

BOARD'S EXHIBIT 1-L

[Title of Board and Cause.]

MOTION TO STRIKE

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, hereby moves that the following portions of the complaint on file herein be stricken:

1. That portion of Paragraph 4 appearing on page 2 which reads as follows: "through Respondent thereafter posting a notice to its employees indicating unmistakably its hostility to its employees joining or otherwise participating in legitimate labor organizations".

2. That portion of Paragraph 4 appearing on page 3, immediately preceding Paragraph 5, and which reads as follows: "and by committing other acts of substantially similar nature and import".

3. That portion of Paragraph 5 appearing on page 3 which reads as follows: "and by the commission of other acts of substantially similar nature and import".

4. That portion of Paragraph 6 appearing on page 4 which reads as follows: "by attempting in divers manners to persuade and coerce various of its employees".

5. That portion of Paragraph 6 appearing on page 4 which reads as follows: "and by committing other acts of substantially similar nature and import".

6. That portion of Paragraph 7 appearing on page 4 which reads as follows: "and by the commission of other acts of substantially similar nature and import".

The basis for this motion to strike the foregoing portions of the complaint on file herein is that the said statements consist of conclusions, and in addition thereto are generalities, and are unintelli-

gible in the absence of some further explanation of their meaning.

Wherefore, respondent prays that the portions of the complaint hereinabove set forth be stricken.

Respectfully submitted,

LATHAM & WATKINS

By PAUL R. WATKINS

Attorneys for Respondent

BOARD'S EXHIBIT 1-M

[Title of Board and Cause.]

MOTION TO DISMISS

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, hereby moves that the complaint on file herein be dismissed for the following reasons:

1. The respondent is not in commerce within the meaning of the National Labor Relations Act, and the National Labor Relations Board has no jurisdiction over respondent's operations or practices.

2. The third amended charge on file herein, and on which the complaint is based, does not conform to Article II, Section 4, particularly subdivision (c) of the Rules and Regulations, Series 2, of the National Labor Relations Board.

Wherefore, respondent prays that the complaint on file herein be forthwith dismissed.

GERMAIN SEED AND PLANT CO.

By LATHAM & WATKINS,

Its Attorneys

By PAUL R. WATKINS

BOARD'S EXHIBIT 1-N

[Title of Board and Cause.]

DEMAND FOR PARTICULARS

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, hereby moves that the complaint on file herein be made more certain, and that the National Labor Relations Board be required to furnish a bill of particulars with regard to the following matters:

The alleged facts set forth in Paragraphs 4, 5, 6 and 7 of the complaint, particularly with regard to the following allegations:

1. In Paragraph 4 on page 2 the allegation that "In or about August, September and October, 1937, and at all times thereafter . . . Respondent, acting through its officers, agents . . . dominated and interfered with the formation and administration of Consolidated and contributed support and assistance to it".

2. In Paragraph 4 on page 2 the allegation that "through said Sage calling a meeting on Respondent's time and/or property".

3. In Paragraph 4 on page 2 the allegation that "through Respondent thereafter posting a notice to its employees indicating unmistakably its hostility to its employees joining or otherwise participating in legitimate labor organizations".

4. In Paragraph 4 on page 2 the allegation that "through said Sage, Nesbit and Frauenberger and others on Respondent's time and/or property thereafter openly campaigning for the formation of an unaffiliated labor organization, through said Voorhees conducting meetings on Respondent's time and/or property".

5. In Paragraph 4 on page 3 the allegation that "through certain of Respondent's supervisory personnel attending and participating in the above-mentioned meetings".

6. In Paragraph 4 on page 3 the allegation that "by thereafter assisting Consolidated through allowing it the use of Respondent's facilities for the posting of bulletins and notices, Respondent's messenger system and other facilities".

7. In Paragraph 4 on page 3 the allegation that "by controlling Consolidated . . . through allowing and/or having individuals representing and acting in the interest of Respondent".

8. In Paragraph 4 on page 3 the allegation that "by canalizing all collective bargaining efforts of its

employees into Consolidated through according it in practice a virtual closed shop".

9. In Paragraph 4 on page 3 the allegation that "and by committing other acts of substantially similar nature and import".

10. In Paragraph 5 on page 3 the allegation that "and by the commission of other acts of substantially similar nature and import".

11. In Paragraph 6 on page 4 the allegation that "by attempting in divers manners to persuade and coerce various of its employees . . . by uttering remarks disparaging to said Union".

12. In Paragraph 6 on page 4 the allegations that "and by committing other acts of substantially similar nature and import".

13. In Paragraph 7 on page 4 the allegation that "and by the commission of other acts of substantially similar nature and import".

The basis for the foregoing motion is that the allegations hereinabove set forth are vague, uncertain, unintelligible; are generalities; are conclusions; and because of their general nature do not apprise the respondent of the alleged acts in sufficient detail or preciseness to enable respondent to answer or defend the alleged charges.

Wherefore, respondent prays that the National Labor Relations Board be required to make the foregoing allegations more certain, and to furnish respondent with a bill of particulars with regard to each of said allegations within sufficient time prior

to the hearing to enable respondent to adequately prepare its defense for said hearing.

Respectfully submitted,

LATHAM & WATKINS

By PAUL R. WATKINS

Attorneys for Respondent

[Title of Board and Cause.]

ANSWER

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, for answer to the complaint on file herein hereby admits, denies, alleges, and explains as follows:

1. Admits the allegations contained in Paragraph 1.

2. Denies the allegations contained in Paragraph 2, and in this connection alleges that while some of respondent's products therein mentioned may be transported into and out of the State of California, the amount thereof is not substantial and does not constitute commerce subject to regulation under the National Labor Relations Act.

3. Admits the allegations contained in Paragraph 3.

4. Denies generally and specifically each and every allegation, matter, and fact contained in Paragraph 4, and in this connection alleges that respondent has at all times purposely and inten-

tionally refrained from interfering in any manner whatsoever with the labor union affiliation of any of its employees. Further in this connection respondent states that it is unable to make a more specific denial of separate allegations contained in said Paragraph 4, because said allegations are of such a general nature without time or place or detail of facts being given that it is impossible to know or ascertain the happenings which the complaint there seeks to allege.

5. Denies each and every allegation, matter, and fact contained in Paragraph 5, and in this connection alleges that it is impossible for respondent to answer the particular allegations contained in said Paragraph 5, incorporated in Paragraph 4 of the complaint, for the same reasons hereinabove set forth in Paragraph 4 of this answer.

6. Denies generally and specifically each and every allegation, matter, and fact contained in Paragraph 6, and in this connection alleges that some general wage increases were put into effect, but not for any of the purposes alleged in said Paragraph 6. Further in this connection respondent states that it is unable to answer specifically the allegations contained in said Paragraph 6 for the reasons hereinabove set forth in Paragraph 4 hereof with respect to the generality of such allegations.

7. Denies each and every allegation, matter, and fact contained in Paragraph 7, and in this connection alleges that respondent is unable to answer specifically any of the allegations therein contained

for the reasons set forth hereinabove in Paragraphs 4 and 6 with respect to the generality of the allegations therein contained or incorporated in Paragraph 7 by reference.

8. Denies each and every allegation, matter, and fact contained in Paragraph 8, and on the contrary alleges that any and all activity which has taken place in connection with the matters set forth in the complaint has tended to avoid labor disputes, and further that the charges on file herein and the complaint here being answered do and will lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

9. Denies each and every allegation, matter, and fact contained in Paragraph 9, and in this connection by way of explanation incorporates in this Paragraph 9 respondent's answer hereinabove set forth in Paragraphs 4 and 6.

Wherefore, respondent prays that the complaint on file herein be forthwith dismissed with prejudice.

Respectfully submitted,

LATHAM & WATKINS

By PAUL R. WATKINS

Attorneys for Respondent

State of California,
County of Los Angeles—ss.

Manfred Meyberg, being first duly sworn, deposes and says:

That he is an officer, to-wit, the President of Germain Seed and Plant Co., the respondent above-named; that he makes this verification for and on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to matters stated upon information and belief, and as to those matters he believes it to be true.

MANFRED MEYBERG

Subscribed and sworn to before me this 19 day of April, 1941.

[Seal]

EARL E. SIDEBOTTOM

Notary Public in and for the County of Los Angeles, State of California.

United States of America
Before the National Labor Relations Board
Twenty-first Region
Case No. XXI-C-1512

In the Matter of GERMAIN SEED AND
PLANT COMPANY¹ and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN &
HELPERS OF AMERICA, LOCAL No.
595, AFL.

Mr. James A. Cobey,
for the Board.

Latham & Watkins,
By Mr. Paul R. Watkins,
of Los Angeles, California,
for the respondent.

Mr. Ralph Woolpert,
of Burbank, California,
for the Union.

INTERMEDIATE REPORT.

Statement of the Case

Upon an amended charge duly filed on February 28, 1941 by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of

¹The name of the respondent was corrected to read as above stated in all the formal papers, by motion granted at the hearing.

America, Local No. 595, AFL, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 5, 1941, against Germain Seed and Plant Company, Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With regard to the unfair labor practices the complaint alleged in substance that the respondent (1) by various specified acts on the part of its officers and agents dominated and interfered with the formation and administration of Consolidated Seedsmen's Union, Inc., herein called the Consolidated, and contributed support and assistance to it; and that (2) by the foregoing acts, by announcing and putting into effect general wage increases in September or October, 1940, by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union and by uttering remarks disparaging to the Union, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Copies of the complaint, accompanied by notice of hearing thereon to be held on April 17, 1941, and

of an order postponing the date of hearing to April 24, 1941, were duly served upon the respondent, the Union and the Consolidated.

On April 19, 1941, the respondent filed with the Regional Director a motion to dismiss the complaint on the grounds that the respondent is not in commerce within the meaning of the Act and that the charge upon which the complaint was issued does not conform to the Rules and Regulations of the Board; a motion to strike various portions of the complaint on the ground that they are conclusions, generalities and unintelligible; and a motion for a bill of particulars.

On April 23 the respondent filed its answer, in which it admitted the allegations of the complaint pertaining to its corporate existence, and the nature of its business, admitted that the Union and the Consolidated are labor organizations, but denied that a substantial amount of its products is transported in interstate commerce and denied that it had engaged in the unfair labor practices alleged in the complaint.

Pursuant to notice a hearing was held at Los Angeles, California, from April 24 to 28, 1941 before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The respondent and the Union appeared at the hearing, at which all parties were afforded an opportunity to be heard, to call, examine and cross-examine witnesses and to introduce evidence bearing on the issues.

At the beginning of the hearing the portion of the respondent's motion to dismiss the complaint predicated upon the alleged invalidity of the charge was denied by the undersigned. At the same time, decision was reserved upon the portion of said motion which was based upon the claim that the Board is without jurisdiction over the respondent. It is now denied. The motions for a bill of particulars and to strike certain allegations of the complaint were also denied by the undersigned, except that counsel for the Board was directed to particularize the allegation that the respondent had interfered with, restrained and coerced its employees "by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union." Thereafter, this allegation was stricken by consent of the parties.

At the close of the hearing the parties were afforded opportunity to argue orally before the undersigned, and to file briefs with him within 15 days. No argument was had, but a brief has been filed by the respondent which has been carefully considered by the undersigned.

On June 13, 1941, pursuant to a request made by the undersigned, the parties entered into an additional stipulation concerning the business of the respondent. In accordance with its terms, said stipulation is hereby made part of the record as Trial Examiner's Exhibit No. 1.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT.

I. The Business of the Respondent²

Germain Seed and Plant Company is a California corporation, having its principal office and place of business at Los Angeles, California. It is engaged in the growing, purchasing and sale of seeds, bulbs, plants and nursery stock, and in the purchasing and sale of insecticides, poultry and garden supplies and remedies, hardware and other similar products.

The respondent operates a wholesale and warehouse department at 747 Terminal Street, Los Angeles, where a general wholesale and retail business is done; retail stores in Los Angeles, Salinas and Santa Maria, California; a retail store and nursery in Van Nuys, California; a warehouse and wholesale and retail store in San Francisco, California; a warehouse in Fresno, California; and a bulb farm at Camarillo, California.

During 1940 the respondent purchased products of the types above mentioned, valued at approximately \$900,000. About 17 per cent of these products, valued at about \$150,000 originated at points outside the State of California. During the same year the respondent sold products valued at approximately \$1,500,000. About 24 per cent of such sales, valued at about \$360,000, was shipped to points outside the State of California.

This proceeding concerns only the warehouse and retail store in Los Angeles, and the retail store and

²The findings in this section are based upon stipulations of the parties.

nursery in Van Nuys. In the year 1940 the respondent's purchases for said warehouse amounted to \$719,860, of which 40 per cent was shipped from points outside the State of California. Sales made by said warehouse during the same period totalled \$873,968, of which 25 per cent was shipped to points outside the State of California. Approximately 90 percent of the business done at the Van Nuys retail store and nursery is handled through said warehouse, from which merchandise is shipped directly to customers of the Van Nuys establishment. Purchases made for the Los Angeles retail store in 1940 amounted to \$88,739, of which about 5 per cent was shipped to said store from points outside the State of California. Sales by the retail store during the same period totalled \$158,393.50, of which about 2 per cent was shipped from said store to points outside the State of California.³

On October 31, 1940 the respondent employed 176 workers, of whom 146 were employed at the Los Angeles and Van Nuys establishments.

II. The Organizations Involved

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

³The record does not disclose whether merchandise is shipped to this store from the warehouse, or whether any of the sales made at this store are shipped from the warehouse.

Consolidated Seedmen's Union, Inc. is an affiliated labor organization. Its membership is restricted to employees and former employees of the respondent.

III. The Unfair Labor Practices

A. Interference, restraint and coercion, and domination of the Consolidated

1. The organization of the Consolidated.

Commencing about August 1937, efforts were made by organizers for the A. F. of L. to organize the Los Angeles employees of the respondent. There was much discussion of the question of union organization among the employees. The activities of the union organizers were brought to the attention of Walter P. Sage, a purchasing agent for the respondent.

Sage has been in the employ of the respondent for 22 years. He was in charge of the shipping department for several years, then served as superintendent of the warehouse and order filling department for about 12 years and became purchasing agent in about 1933. As purchasing agent Sage was and is in charge of the purchase of insecticides, spray pumps and miscellaneous items. Meyberg, president of the respondent, testified that Sage was included among the small group of employees designated as "department managers." The undersigned finds that he was an executive of the respondent and

that he represented management in the activities hereinafter detailed.⁴

Sage testified that some of the employees discussed with him the desirability of organizing a union of some kind, but the only ones whose names he could recall were Nesbit and Hatfield, whose status is discussed below. Sage testified, further, and the undersigned finds that as a result of these discussions, he decided to call a meeting of the employees and that he "just sent word around the building and asked them if they would care to enter into a meeting with me after work, Saturday afternoon, and talk the thing over, and they said they would." As a result, a meeting of 15 or 20 employees was held on the shipping floor of the Los Angeles warehouse after working hours on a Saturday in August, 1937.

Among those present at the meeting were Hill, manager of the shipping department, and Gates, manager of the warehouse and mill room. It is conceded that both these men were supervisory employees with authority to hire and discharge. Also present were Hatfield, Nesbit, Hook and Luck, all, as found below, representatives of the management.

Sage testified, and the undersigned finds, that prior to this meeting he had heard that an independent union was functioning at the local plant

⁴That Sage exercised no supervisory authority over other employees in no way alters the facts that his executive position identified him with the management.

of the Cudahy Packing Company, and that he went there and conferred with one David Stratton, secretary and business agent of that independent union, for the purpose of obtaining more information about it. Stratton gave Sage the name of J. P. Voorhees as an attorney who was familiar with the organization of independent unions.

Sage presided at the meeting and was the only speaker. He testified, and the undersigned finds that he stated to the employees:

“Several of you boys have come to me and told me that there were different union organizers coming into the plant talking to groups, and that you had expressed to me a desire to have a union of some kind”, and I made the suggestion that, “Perhaps you would like to have a little independent union of your own.”

* * * * *

They said that they wanted to form the union, and I said, “Well, I think then you should have a legal man to do that for you.” And they asked me if I knew of anyone, and I told them I did through what Mr. Stratton told me about Mr. Voorhees, and that I would be glad to get a man for them if they wanted one.

The undersigned finds that Sage made additional statements attributed to him by witnesses Hulphers, Yoakum and Freeman, all employees of the respondent, to the following effect: That they were all one

happy family and wanted to be sure that what they did was right; that they should not do anything which might endanger their jobs; that the respondent would prefer a "house union" to an outside union and that Meyberg and Schoenfeld (president and vice-president of the respondent) had plenty of money and could close the plant down at any time.

About two weeks later Sage again held a meeting of the employees at the same place on a Saturday afternoon after working hours. Voorhees and Stratton were present. Sage introduced Voorhees as a lawyer experienced in the organization of independent unions. Voorhees told the employees that they could form any union they pleased without employer interference, explained the alleged advantages of independent unions over outside unions and advised them to incorporate. He also informed them that employees having the right to hire, discharge or discipline or occupying executive positions could not belong to a union. Hill raised a question about his right to be present and was told that both he and Gates should leave. They departed, but Sage, Nesbit, Hatfield, Hook and Luck remained. Voorhees then introduced Stratton, who spoke briefly about the success of the independent union at the Cudahy plant.

It was also suggested at this meeting that an election be held to determine the wishes of the employees before organization of an independent union was undertaken. Some witnesses attributed this suggestion to Sage, others to Voorhees. The

undersigned finds that the suggestion was made by Voorhees.

Two or three days later an election was held in the plant during working hours. Printed ballots, the source and authorship of which are not established by the record, were distributed to the employees, during working hours. It was testified by witness Kadous, and the undersigned finds, that the ballot boxes were placed in the various departments of the warehouse, the Hill Street store and the Van Nuys branch, that the employees voted at such times as they found convenient, and that the ballots were counted and tabulated on the shipping floor.⁵

The ballots gave the employees a choice among the C. I. O., the A. F. of L., an independent union and "Have Mr. Meyberg talk to us." Of 102 ballots cast, 45 were for an independent union, 33 for the A. F. of L., 11 for a talk by Meyberg, 3 for the C. I. O. and 10 were spoiled. Thus, the independent union received a minority of both the total number of ballots cast and the total number of valid ballots cast.

⁵None of the witnesses was able to state how the group which counted the ballots was chosen. Among those in the group were W. S. Clark, who was in charge of the Van Nuys nursery, and Vivian Nesbit, hereinafter found to be a supervisory employee. Clark was included in a group of management representatives invited by the Consolidated to attend a dinner meeting on May 2, 1939, in order to promote a closer relationship between the Consolidated and the management.

A pre-organization committee was then created, composed of employees from the various departments. None of the witnesses including members of the committee was able to explain how the committee was chosen. The committee of seven included Clark, Frauenberger, Luck and Hook, all found herein to be representatives of management, and Dorothy Turton, secretary to vice-president Schoenfeld. The members of the pre-organizational committee circulated petitions designating them as "a committee to formulate an independent union" and to represent the employees for the purpose of collective bargaining and also collected initiation fees. These activities were carried on during working hours about September 1, 1937.

Among the signers of the petitions were Turton, Sage, Clark, O. E. Johnson, assistant manager of the Hill Street retail store. A. Stanley Williams, assistant to Earl E. Sidebottom, secretary-treasurer of the respondent, Nesbit, Hatfield, Hook, Frauenberger and Luck.

On September 9, 1937 Articles of Incorporation of the Consolidated, prepared by Voorhees, were executed. Including among the seven incorporators who also became the first Board of Directors, were Frauenberger, Turton, Hook, Luck and Clark.⁶

Following completion of the incorporation and the drafting of bylaws, another meeting of the

⁶Clark and Hook resigned as directors on September 20, 1937.

employees was held in the respondent's Hill Street store. Voorhees testified, and the undersigned finds that at this meeting several employees raised a question about the right of Sage to belong to the Consolidated because he held a supervisory or executive position, that Voorhees then stated that "since they felt he was in that position . . . that he had no right in the meeting whatsoever," and asked Sage to leave. There is no evidence that Sage had any further connection with the Consolidated following this occurrence.

On September 28, 1937 the Consolidated informed the respondent that it represented a majority of the employees and submitted evidence in the form of signatures to the pre-organization petitions and membership applications in support of its claim. This evidence was duly checked by the respondent which, on October 1, recognized the Consolidated as exclusive representative of its employees at the Los Angeles and Van Nuys establishments.

It is necessary now to consider the evidence pertaining to the status of Frauenberger, Nesbit, Luck and Hook, all of whom were active in the organization of the Consolidated.

Frauenberger has been in the employ of the respondent for 14 years. He became the leader in the organization of the Consolidated after Sage's withdrawal. He was then city shipping clerk in the warehouse, Hill being his immediate superior. Frauenberger had no authority to hire, discharge,

or otherwise discipline employees. He was charged with the duty of relaying Hill's orders to the truck drivers, distributing work to them and directing their work, routing the trucks, checking out the loads, helping load the trucks and attending to complaints concerning deliveries.

Nesbit has been in the respondent's employ for 17 years and is an order filler on the fourth floor of the warehouse, his superior being either Hill or Gates. The number of employees on this floor ranges from two to five depending on the season. Nesbit denied that he was in charge of this floor, but explained that "my idea of being in charge is being in charge . . . so as to hire and fire." The testimony of Yoakum, Loy and Hulphers, credited by the undersigned, establishes that Nesbit directs the work of the other employees on the fourth floor.

Luck testified, and it is found, that he was head of the bulb department on the third floor of the warehouse. While he may sometimes be the sole employee in that department during the off-season, he has three or four other employees under him during the busy season. He supervises and inspects their work, takes care of the invoices and the buying. Concerning his authority to recommend hiring or discharging, he testified:

Well, I could certainly recommend it, whether I was in any position or not. I mean, as to having the ability to, why, in my department at times it was very busy and we did have more

people, and when some of them possibly weren't getting the job done, I would go to Mr. Pieters, who was in charge of that department as to hiring and firing, and tell him I would like to have somebody either replaced or put on some other job . . . I would possibly like recommend.

Hook, employed by the respondent for 18 years, operates the mills on the 6th floor of the warehouse, where the seeds are cleaned. During the busy season about 12 additional employees work in this department. Hook testified and it is found that he relays the orders of Foreman Gates to these employees as well as to the "bull gang"; that he is responsible for the proper performance of their work and that he guides and instructs them in their work; and that "If they don't do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do."

Hatfield, employed by the respondent for 22 years, fills seed orders on the 5th and 6th floors of the warehouse. He has one or more helpers, as the work requires. When he needs additional help, he asks Gates for it, but if the need is urgent, he testified, "I just grab anybody that is there," usually from the "bull gang." He directs and supervises the work of his helper or helpers and is responsible for the proper filling of seed orders.

One of the early demands made by the Consolidated was for "A better allotment and statement

concerning sub-foremen and their positions.”⁷ It is evident from the record that Frauenberger, Nesbit, Luck, Hatfield and Hook are the only employees of the respondent who could be characterized as sub-foremen. Hook testified that this demand affected himself, Nesbit and Hatfield, and that they felt that they should get more pay than the ordinary employees “for being a little more responsible for the type of work we was doing.”

The undersigned is of the opinion and finds that these five men were working foremen with supervisory authority, despite their lack of authority to hire or discharge; that their interests were closely identified with those of the management; that in assisting in the organization of the Consolidated, they, together with Clark, Turton, Hill, Gates, Johnson and Williams, appeared to be and were acting in furtherance of the wishes of the respondent as expressed by Sage.

2. Subsequent history of the Consolidated

Early in October, 1937, the Consolidated prepared and submitted to Meyberg a list of 20 “Suggestions,” concerning wages, hours and working conditions. While many of these were statements of existing practices, several represented changes of

⁷On December 22, 1937, the Consolidated issued a notice to its members setting forth “agreements obtained” from the respondent. One of the items claimed to have been agreed to was “A better allotment and statement concerning sub-foremen and their positions.”

substantial benefit to the employees. The respondent approved all but four of these suggestions, those rejected including changes in the length of the work week, 2 weeks vacation with pay and restoration of the 1929 wage scale. However, the respondent granted wage increases ranging from 5 to 18 per cent. The Consolidated did not ask that the respondent enter into a written agreement embodying the matters agreed to. On October 14, 1937, the Consolidated informed the respondent that its members had authorized its Board of Directors "to proceed with making definite agreements . . . as per the suggestions already presented . . .". It does not appear that anything further was done toward obtaining "definite agreements."⁸

On May 19, 1938, the Consolidated invited Meyberg and other representatives of the respondent to attend a picnic to be held on June 18, and asked him for the use of a company truck and for "any financial consideration that the firm would deem feasible." Meyberg granted the Consolidated the use of a truck, contributed \$10 toward the picnic and paid a fine incurred by the driver of the truck. On July 30, 1938, the Consolidated held a "Weenie Roast." Although the record does not show the precise nature of the respondent's contribution on this occa-

⁸The minutes of a meeting of the Consolidated held on August 20, 1940, show that one of the employees proposed that the Consolidated obtain a signed agreement, to which the President replied that this could not be done.

sion, it is evident that some was made, for, on September 7, 1938, the Consolidated wrote to Meyberg expressing thanks for "the help and cooperation you and the Germain Seed & Plant Company extended . . ." It also appears that Meyberg gave the Consolidated the use of the shipping floor in the warehouse for a dance held in October, 1938.

The Consolidated attempted to secure preference in employment for its members and on several occasions furnished Meyberg with lists of unemployed members and employees not in good standing with the Consolidated. Although Meyberg denied having requested lists of delinquent members he admitted that he received such lists and stated that he used his own judgment in acting on them. The Consolidated informed delinquent members by letter that their names were being included on a list of "non-union members" which "goes to Mr. Meyberg each month" and that "any future lay-offs are to be chosen" from that list. On May 23, 1939, Hook received such a letter from the Consolidated. The undersigned credits Hook's undenied testimony that he went to Meyberg and asked whether the Consolidated had a closed-shop agreement, and whether he would be laid off if he did not pay his dues. To both these questions Meyberg replied in the negative, and then stated, "To keep harmony in the firm, it is better to join the union, the fifty cents a month doesn't break you . . . To keep harmony in the firm, it is best to join, to keep paying your

dues." Hook paid his dues and remained active in the Consolidated.

Jack Thrift testified that on October 10, 1940 he was asked by Hill, his foreman, whether he belonged to the Union; that when Thrift answered in the affirmative, Hill stated:

Well, that makes it sort of bad, Jack, because I intended to keep you on here. Now I don't know what to do about it . . . to my notion, the A. F. of L. and the C. I. O., all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C. S. U. [Consolidated] as well, they are taking care of you here, whereas the dues you are paying into the A. F. of L. is doing you no good. We don't want the A. F. of L. in here or any other union.

that Hill then asked him whether he could get a withdrawal card, and Thrift replied that he preferred to remain a union member. Although Thrift's version of this conversation on cross-examination was somewhat different, the substance of it was essentially the same. The record indicates that Thrift's job was in jeopardy at this time, Meyberg having told Hill a week earlier to keep Thrift on when it had been planned to lay him off. Hill was not called as a witness. The undersigned has carefully considered the testimony of Thrift and of Meyberg on this matter and finds that Hill made the statements attributed to him by Thrift.

Even after the increases granted by the respondent in October 1937, there was considerable dissatisfaction among the employees with the wage scale. On February 1, 1938, a petition was presented to the Consolidated on behalf of a group of employees by their representative, Hook, calling for, among other things, \$100 per month as a minimum wage for common labor. The Board of Directors of the Consolidated voted to take no action on this request, and nothing further was done about it up to August 20, 1940. At that time Hulphers again demanded action on this request. The minutes of a meeting held on that day state: "The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another Union." At the same meeting of the Consolidated a motion was carried requiring the president to "go to the Labor Council and find out the wage scale and find out what departments would be taken care of by the other Unions."

Thereafter, as appears from the uncontradicted testimony of Loy which is credited by the undersigned, the members of the Consolidated were informed by their representatives that "it was absolutely impossible to get a raise". As a consequence, in the first week of September, 1940, a number of employees, including Hulphers, Loy and Montgomery, went to the offices of the Union and several of them signed applications for membership in the Union. The following morning Hulphers, Loy and

Montgomery went to see Meyberg. They told him that they had not been able to obtain satisfaction through the Consolidated, that there was unrest among the employees and that they wanted to consult him before going any further. Meyberg stated that he wished to speak to all of the employees. That evening, after working hours, practically all the men in the warehouse and some of the women gathered in Meyberg's office. Hulphers acted as spokesman for the employees and reiterated the substance of what had been told Meyberg that morning. There was some discussion of the possibility of the employees joining an outside union. Meyberg then stated that he would like to discuss the problem with the men only and suggested that he take them to dinner at a later date, following which further discussion could be had. Meyberg asked that, in the meantime, the men prepare a petition embodying their demands.

That this move for wage increases was a move by the employees themselves, wholly apart from the Consolidated, is established not only by the testimony of Loy and Hulphers, but also by the following statement contained in the minutes of a meeting of the Consolidated on September 13, 1940:

Union [i.e., Consolidated] and non-Union members went in to Manfred Meyberg to ask for more money. He is to have a meeting with the men September 17th.

On September 17 Meyberg met with the men at the plant after having taken them to dinner. It

appears that on this occasion Butterfield, president of the Consolidated, presented two petitions to Meyberg, one which had been sponsored by the group led by Hulphers calling for a substantial wage increase and one which had been sponsored by Butterfield himself calling for a smaller increase. Neither of these had been authorized by the Consolidated, but the latter had voted to adopt the one bearing the larger number of signatures. The undersigned finds, on the basis of Hulphers's undenied testimony, that Meyberg addressed the employees, stating that he had heard of unrest among them, that "We are all here together, so we want to try to work all these things out among ourselves. We are one happy family . . ." He stated further that the Consolidated had not presented any demands for wage increases, but then said that whatever was done by him would be done through the Consolidated, and that any wage increases granted would be retroactive to September 15, 1940. Finally, he said, according to the undenied testimony of Hulphers, Loy and Yoakum, credited by the undersigned, "Give me a chance to do something. Being you come (sic) up here for the chance, before you do anything, before you call the doctor in, maybe it is not the right ailment. Maybe you have got the wrong ailment. Maybe you won't need the doctor." It is clear from the testimony of these witnesses that by the "doctor" Meyberg meant the Union. On October 3, 1940, Meyberg granted substantial wage increases, of which the employees were apprised

through notices sent by Meyberg to the Consolidated.

On October 8, 1940, Meyberg met with the Directors of the Consolidated to learn whether the various divisions were satisfied with the wage increases. The minutes of this meeting reveal that, with regard to some employees who were dissatisfied, namely, Wilford, Casey, Bushing and Cook, their grievances were disposed of by having Meyberg talk to them.

The uncontradicted testimony of numerous witnesses establishes and it is found that memberships in the Consolidated were solicited, and dues were customarily collected during working hours on the respondent's premises; that meeting notices were regularly posted over the time clocks in the various divisions, and that, on occasion, the Board of Directors of the Consolidated held meetings in the warehouse. Although the record establishes that the permission of the respondent was neither sought nor specifically given for these practices, and although on one occasion in the summer of 1940 Gates told Hook not to collect dues during working hours, it is clear that the activities of the Consolidated in the plant were open and notorious and had the tacit consent of the respondent.⁹

⁹Contrary to the contention advanced in the respondent's brief, there is no substantial evidence that organizational activities on behalf of the Union took place in the plant during working hours on a scale in any way comparable to those of the Consolidated described herein.

Supervisory employees and management representatives have continued to play an active role in the Consolidated. Frauenberger was its president from September 1937 to April 5, 1938, Luck from April 1938 to April 1939, and Hook now occupies that office. Turton was secretary until June 7, 1938. The directors since the beginning of 1938 have included, at various times, Luck, Hook, Hatfield, Nesbit and Turton. Employees having the power to hire and discharge have been refused membership in the Consolidated.

At a meeting of the Directors of the Consolidated on February 5, 1941 it was decided that "it would be best to have any and all letters dictated by Mr. Meyberg concerning said Union [Consolidated] be dictated to a secretary holding Union [Consolidated] membership." Butterfield, who was then president of the Consolidated, testified that Meyberg was informed of the action of the Directors and that thereafter all letters to the Consolidated were initialled by one of its members instead of by the person who had theretofore done it. This testimony was not denied by Meyberg, and the undersigned finds that he complied with the request of the Directors as expressed in the minutes.

The respondent has consistently refused to enter into any written agreement with the Consolidated. The latter has acquiesced in this course of conduct. It has obtained minor concessions for the employees and the satisfactory disposition of grievances, when

Meyberg was willing to cooperate, but has been wholly ineffectual when its proposals to have run counter to his wishes. In matters of substance such as increased vacation privileges to employees with more than 5 years of service, requested by them since 1938, the Consolidated has been content with presenting the requests of its members. Similarly, the two-year-old demand of the employees for wage increases was met, in October 1940, only because of the threat that an outside union might be brought in.

3. Conclusions regarding the Consolidated

The Consolidated was created at the direct suggestion of, and as a result of intimidatory and coercive statements by Sage, a representative of the respondent. Its organization was accomplished as a result of meetings and other activities, conducted on the respondent's premises and during working hours, with the assistance of Sage, Hill, Gates, Clark, Turton, Johnson, Frauenberger, Hook, Luck, Hatfield and Nesbit, all supervisory employees or employees whose interests were identified with those of the respondent. That the Consolidated, upon the advice of the attorney recommended by Sage, thereafter ridded itself of Sage, Hill, Gates and other supervisors having the right to hire and discharge, in no way absolves the respondent of responsibility for the activities of its representatives in the initial organization of the Consolidated. The record affords no basis for the assumption that the Consolidated would have been created without the interference of

Sage, but it does warrant a contrary assumption. The policy of the Consolidated of refusing membership to employees with the right to hire and discharge cannot be accepted as showing emancipation from company domination, in the face of the continued membership and activity of supervisory employees and of others whose interests are identified with those of the respondent. The mere absence of power to hire or discharge is too narrow a basis for the determination of either the existence of supervisory authority or the liability of the respondent for the activities of its employees. The so-called election held in the plant in September 1937, during working hours and following the interference and coercion practiced by Sage, was, in itself, a further act of interference by the respondent and cannot be taken as reflecting the free choice of the employees. The respondent has at no time taken any action to disavow the conduct of Sage and its other representatives in instigating and assisting in the organization of the Consolidated.

The subsequent history of the Consolidated furnishes further evidence of domination by the respondent. With the exception of Sage, Hill and Gates, the same supervisory employees and other management representatives continued their membership and activity. The use of the respondent's premises and time for dues collection, membership solicitation, and circulation of petitions continued, as did the practice of posting meeting notices over

the time clocks. The Consolidated was granted the use of respondent's premises for at least one social function, and requested and received financial and other assistance from the respondent for others. That this assistance was given for social activities in no way detracts from its significance as a violation of the Act. The record establishes that social activities were most important to the Consolidated to stimulate the interest and attract the support of the employees.¹⁰ The Consolidated at no time challenged the refusal of the respondent to grant it a written agreement, although the record is replete with evidence showing the need for such an agreement. As stated above, it has been ineffectual in bargaining on substantial matters. The raises of October, 1940, were granted as a result of the threat of and in order to prevent union organization. In granting them, and in insisting that they be granted as though the Consolidated had bargained for them, the respondent gave substantial support to that organization. Indicative of the respondent's antagonism to the Union is the evidence concerning Hill's statement to Thrift in October, 1940. Indicative of the affinity between the respondent and the Consolidated is the evidence concerning Hook's dues delinquency, and Meyberg's changing

¹⁰Almost from its inception the Consolidated found it necessary to resort to various devices including the serving of refreshments and "Bank Nights" in an attempt to stimulate interest in its meetings.

of his stenographer at the request of the Consolidated.

The undersigned finds that the respondent dominated and interfered with the formation and administration of the Consolidated and contributed support to it, and that the respondent thereby, and by announcing and putting into effect the general wage increase in October 1940 and by the statements of Hill to Thrift disparaging the Union, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

The undersigned will recommend that the respondent cease and desist from the unfair labor practices in which it has engaged, as above found, and that it take certain affirmative action which will effectuate the purposes and policies of the Act.

It has been found that the respondent has dominated and interfered with the formation and admin-

istration of the Consolidated and contributed financial and other support to it. The Consolidated was created and has been utilized by the respondent as an instrumentality to defeat the rights of its employees under the Act. Because of the respondent's illegal conduct with relation to it, the Consolidated is incapable of serving the respondent's employees as their genuine collective bargaining agency. The effects and consequences of the respondent's domination, interference and support of the Consolidated, as well as continued recognition by the respondent of the Consolidated as bargaining representative of its employees, constitute a continuing obstacle to the free exercise by its employees of their right to self-organization and to bargain collectively through representatives of their own choosing. It will, therefore, be recommended that the respondent withdraw all recognition from the Consolidated as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Consolidated as such representative.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW.

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, and Consolidated Seedsmen's Union, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the formation and administration of Consolidated Seedsmen's Union, Inc. and contributing support thereto, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

3. The respondent, by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Wherefore, the undersigned recommends that the respondent and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Consolidated Seedsmen's Union, Inc. or with the formation or administration of any other labor organization of its employees, and from contributing support to Consolidated Seedsmen's Union, Inc., or to any other labor organization of its employees;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish said organization as such representative;

(b) Immediately post notices to its employees in conspicuous places throughout its places of business in Los Angeles and Van Nuys, California, and maintain such notices for a period of at least sixty (60) days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) hereof; and (2) that it will take the affirmative action set forth in paragraph 2 (a) hereof;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20)

days from the date of the receipt of a copy of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless, on or before twenty (20) days from the receipt of a copy of the Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

Any party may, within thirty (30) days after the date of the order transferring this case to the Board, pursuant to Section 32 of Article II of National Labor Relations Board Rules and Regulations, Series 2, as amended, file a brief with the Board, Shoreham Building, Washington, D. C. Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board, pursuant to said Section 32 of said Article II.

Dated: June 17, 1941.

JAMES C. PARADISE,
Trial Examiner.

TRIAL EXAMINER'S EXHIBIT No. 1

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. XXI-C-1512

In the Matter of

GERMAIN SEED AND PLANT COMPANY

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, LOCAL 595, A. F. L.

STIPULATION

It Is Hereby Stipulated And Agreed by and between Germain Seed and Plant Company and National Labor Relations Board, each through its undersigned counsel, that:

1. Germain Seed and Plant Company, hereinafter called "Respondent," is a California corporation having its principal office and place of business at 747 Terminal Street, Los Angeles, California. It is engaged in the growing, buying refining, and sale of seeds, bulbs, plants, nursery stock, insecticides, poultry, garden supplies and remedies, and hardware, etc.

2. In the conduct of this business Respondent operates several commercial establishments. One of these is a six story warehouse located at 747

Terminal Street, Los Angeles, California. This establishment is hereinafter referred to as "warehouse." Another is a retail store located at 625 South Hill Street, Los Angeles, California. This establishment is hereinafter referred to as "Hill Street store." A third is a retail store and nursery near Van Nuys, California. This establishment is hereinafter referred to as "nursery."

3. Approximately ninety per cent (90%) of the business done at the nursery is handled through the warehouse. Orders filled at the nursery are customarily placed with the Respondent at the warehouse and merchandise disposed of at the nursery is customarily sent to the warehouse on a merchandise transfer and is then shipped from the warehouse to the customers. During the calendar year January 1 through December 31, 1940, sales at the nursery amounted to approximately Sixty-eight Thousand Dollars (\$68,000).

4. During the calendar year, January 1 through December 31, 1940, the total purchases by the Respondent for the warehouse amounted to approximately Seven Hundred and Nineteen Thousand, Eight Hundred and Sixty Dollars (\$719,860). Warehouse sales for the same period amounted to approximately Eight Hundred Seventy Three Thousand, Nine Hundred and Sixty-eight Dollars (\$873,968). Approximately Two Hundred and Eighty-five Thousand Dollars (\$285,000) of the purchases, constituting roughly forty per cent (40%) of them, necessitated shipments to the warehouse from points

located outside of the State of California. Approximately Two Hundred and Twenty-three Thousand, Three Hundred and Ninety-one Dollars (\$223,391) of the sales, constituting roughly twenty-five per cent (25%) of them, necessitated shipments from the warehouse to points located outside of the State of California.

5. During the calendar year January 1 through December 31, 1940, Respondent made purchases for the Hill Street store totaling Eighty-eight Thousand, Seven Hundred and Thirty-nine Dollars (\$88,739). The sales from this establishment for the same period totaled One Hundred Fifty-eight Thousand, Three Hundred and Ninety-three Dollars and Fifty Cents (\$158,393.50). Approximately Four Thousand, Two Hundred and Seventy-three Dollars and Sixty-five Cents (\$4,273.65) of the purchases, constituting roughly five per cent (5%) of them, necessitated shipments to the Hill Street store from points located outside of the State of California. Approximately Three Thousand, Eight Hundred and Ten Dollars and Sixty-seven Cents (\$3,810.67) of the sales, constituting roughly two per cent (2%) of them, necessitated shipments from the Hill Street store to points located outside of the State of California.

6. Where the figures and percentages set forth in the foregoing paragraphs conflict with those set forth in the Stipulation between Respondent and the National Labor Relations Board previously admitted in evidence on April 24, 1941, in the

hearing heretofore held in these proceedings as Board Exhibit No. 2, the figures in this Stipulation shall be deemed to be the correct figures and shall be taken to correct those in the aforementioned Board Exhibit No. 2.

7. This Stipulation is to be marked as Trial Examiner's Exhibit No. 1 by the official reporter of these proceedings and shall then become a part of the official record of these proceedings.

Dated, this 13th day of June, 1941.

GERMAIN SEED AND PLANT
COMPANY,

By LATHAM & WATKINS,

By PAUL R. WATKINS,

Its Attorneys.

NATIONAL LABOR RELATIONS
BOARD,

By JAMES A. COBEY,

Its Attorney.

[Title of Board and Cause.]

EXCEPTIONS OF THE GERMAIN SEED AND
PLANT COMPANY TO RULINGS OF THE
TRIAL EXAMINER AND TO THE INTER-
MEDIATE REPORT

The Germain Seed and Plant Company saving and reserving the right to file any further objections and exceptions it desires, hereby makes the following statement of exceptions upon which it will rely in connection with the consideration of the record and the Intermediate Report heretofore made and filed herein.

As to the Record

(1) Respondent excepts to the Trial Examiner's ruling on respondent's motion to dismiss the complaint (Board's 1-M) in that the Trial Examiner by his Ruling of April 24, 1941 erred in denying said motion to the extent said motion was based on the claim that the third amended charge is not in accordance with the Rules and Regulations.

(2) Respondent excepts to the ruling of the Trial Examiner on respondent's motion for a bill of particulars (Board's 1-N) in that the Trial Examiner by his Ruling of April 24, 1941 erred in denying said motion with the exception of items 11 and 12 of said motion.

(3) Respondent excepts to the ruling of the Trial Examiner on respondent's motion to strike (Board's 1-L) in that the Trial Examiner by his

Ruling of April 24, 1941 erred in denying said motion with the exception of items 4 and 5 of said motion, and

(4) Respondent excepts to the ruling of the Trial Examiner in support of his ruling sustaining items 11 and 12 of respondent's motion for a bill of particulars (Board's 1-HO in that the Trial Examiner erred in not requiring the Board to strike from paragraph 6 of the complaint (Board's 1-F) the following:

“ . . . by uttering remarks disparaging to said Union and by committing other acts of substantially similar nature and import.”

Intermediate Report

Respondent excepts to the Intermediate Report of the Trial Examiner on file herein with respect to the findings, conclusions and recommendations covering the charge of violation of Section 8 (1) and Section 8 (2) of the National Labor Relations Act.

Generally, respondent excepts to the findings, conclusions and recommendations with respect to said matters on the following grounds:

- (1) They are contrary to the evidence;
- (2) They are not supported by any substantial evidence;
- (3) They are contrary to the spirit and intent of the National Labor Relations Act;
- (4) They are contrary to law;

(5) They are based upon conjecture, and upon unwarranted and unjustified assumptions;

(6) They are based upon inferential and uncertain testimony by witnesses of very doubtful credibility despite the presence of direct positive testimony to the contrary by highly credible witnesses.

(7) They entirely overlook the fact that there is not one iota of evidence that any one of the executive officers of respondent or any one of the foremen of respondent had a single thing to do with the formation of Consolidated Seedsmen's Union, Inc. (hereinafter referred to as "Consolidated").

Organization of Consolidated

In addition to the foregoing general exceptions respondent excepts as follows to the specific findings and conclusions of the Trial Examiner:

Exception (1) On Page 3, Lines 42-3 the Examiner, in referring to Consolidated, finds:

"Its membership is restricted to employees and former employees of the respondent."

This finding is directly contrary to both documentary and oral evidence. As an example take the testimony of the Board's own star witness, Hulphers, who testified on this as follows:

"The Witness: We permitted people who were employees of other seed companies, who wished to affiliate with us for bargaining pur-

poses for the union's benefit, to belong to the Consolidated Seedsmen's Union." (Tr. 173-4)

The sixth provision of Consolidated's Articles of Incorporation provides:

"Sixth. Units of this corporation, to be known as Locals, may be established at such times and places as may be authorized by the Board of Directors." (Board's Exhibit 4-A)

This finding is certainly reflected by this evidence as well as by the testimony of Luck that Consolidated actually negotiated with the employees of several other firms about coming into Consolidated. (Tr. 447)

Exception (2) On Page 4, Lines 8-10, the Examiner finds that Sage was:

"... an executive of the respondent and that he represented the management in the activities hereinafter detailed."

This finding is wholly unsupported by the evidence. Both Sage and Meyberg, the President of the company, testified as to the duties of Sage. Sage testified that:

"(I had charge of the purchases only in) the department handling insecticides and spray pumps and miscellaneous items like that, I guess you would call it a sundries department." (Tr. 16-17)

Meyberg testified:

“He is a purchasing agent; buys sundries and certain articles connected with a definite department down there.” (Tr. 566)

Certainly there is nothing in Sage’s job as purchasing agent for one of several departments which would justify classifying him as an “executive” or “supervisor” of respondent, nor does the fact that he was present at the meeting of the so-called “department managers” furnish any basis for classifying him as an “executive” or “supervisor”. He has no jurisdiction of any character over any of the employees.

Still more important, the finding “that he represented management in the activities hereinafter detailed” is without any evidentiary support whatever. By the uncontradicted testimony of Sage, it was the employees themselves that induced him to bring them together. (Tr. 38) Many of them had repeatedly talked to him about the activities of union organizers in the plant and had told him that they thought that maybe the employees themselves should organize, and that they thought they might like to have an employee organization like the former Germain Improvement Association. (Tr. 17, 18, 25) This fact is amply supported by the statements attributed by the Examiner to Sage at the first meeting where Sage explained to the employees that a number of them had come to him regarding this matter and they had expressed a desire that they

have a union of some kind. (Rep. P. 4, L. 41-45) The only possible evidence which, by any stretch of the imagination, could support a finding that in carrying on his activities Sage was acting on behalf of the management would be a possible inference from the testimony of Hulphers that about the time of the first meeting there was a meeting of department heads, of which Sage was one. As to the nature of the meeting Hulphers testified he could get no information. (Tr. 122-123) Any inference that might possibly be drawn from this testimony is clearly rebutted by the positive testimony of Mr. Meyberg that at no time during this period did he hold a meeting of the department heads to discuss any union or the organizing activities that were then going on around the plant (Tr. 569) and by the direct testimony of Sage.

“Q. (By Mr. Watkins) Mr. Sage, directing your attention to the meeting held in the warehouse at the Germain plant on or about August, 1937, that is, the first meeting that was held there prior to the time that Mr. Voorhees was brought in, I want to ask whether or not you at that time or subsequently received any instructions or suggestions from anyone connected with the management of the company with regard to the holding of that meeting?

“A. No sir.

“Q. Did you at any time receive any instructions or suggestions from anyone con-

nected with the management concerning the formation of an independent union?

“A. No sir.

“Q. Or the desirability of an independent union?

“A. No sir.” (Tr. 564).

Exception (3) In footnote 4, Page 4, Lines 56-58, the Examiner concludes:

“That Sage exercised no supervisory authority over other employees in no way alters the fact that his executive position identified him with the management.”

This negative conclusion of the Examiner is very clearly based upon his assumption of facts which are contrary to the evidence. There is no evidence to support his finding that Sage was an executive and there is no evidence to support any finding that Sage was identified with the management. Accordingly, the only importance of the fact that Sage exercised no supervisory authority over other employees is its confirmation of the fact that Sage was not an executive. Stripped of this erroneous assumption this footnote has no significance whatever.

Exception (4) On Page 4, Lines 12-15, the Examiner seems to make something of the fact that Sage could only recall the names of Nesbit and Hatfield of those employees who discussed the union problem with him prior to the first meeting.

The inference from this point being made by the Examiner certainly is unwarranted. This matter occurred almost four years prior to the time of Sage's testimony. The respondent should not be penalized because this entire case was not brought before the Board while the facts were fresh in the minds of the witnesses.

Exception (5) On Page 4, Lines 27-28, the Examiner notes:

“Also present were Hatfield, Nesbit, Hook and Luck, all as found below representatives of the management.”

We except to this statement referring to these four men as representatives of the management. In dealing with a subsequent part of the report we shall go into detail regarding the status of each of these four men. (See Exception 16) However, at this point we except to the general statement that they were representatives of the management. Furthermore, at this point we wish to point out that the manner in which the Examiner has set forth this case illustrates its weakness. He first assumes that these parties are representative of the management and then he builds up his case on that hypothesis. Subsequently, after having presented his case he attempts to justify his original hypothesis. Such a procedure obviously shows the weakness of the Board's whole case.

Exception (6) On Page 4, Lines 30-36, the Examiner finds that Sage went to see Mr. Stratton of

Cudahy Packing Company regarding an independent union functioning at Cudahy's Plant and "for the purpose of obtaining more information about it" and also that Mr. Stratton referred Mr. Sage to Voorhees as an attorney familiar with the organizing of independent unions.

These findings so far as they go are correct. However, they ignore one most important point, and that is that the employees had, many years before, an association among themselves to which any employee could belong. Certainly it was obvious to anyone in 1937 that in view of the then recent and much discussed but little understood Federal Legislation regarding labor unions that the men would make inquiry as to what they might do.

Exception (7) On Page 4, Line 38, the Examiner finds with respect to the first meeting that "Sage presided at the meeting and was the only speaker."

If this statement is meant to imply that no one else at the meeting had anything to say, it is clearly erroneous. There is ample testimony that the meeting was in the nature of a general discussion with the employees taking part. (Sage, Tr. 25; Kadous, Tr. 90; Hulphers, Tr. 120; Yoakum, Tr. 236; Luck, Tr. 412, 448)

Exception (8) On Page 5, Lines 1 through 8, the Examiner finds that:

"Sage made additional statements attributed to him by witnesses Hulphers, Yoakum, and Freeman, all employees of the respondent to

the following effect: That they were all one happy family and wanted to be sure that what they did was right; that they shouldn't do anything which might endanger their jobs; that the respondent would prefer a 'house union' to an outside union and that Meyberg and Schoenfeld (president and vice-president of the respondent) had plenty of money and could close the plant down at any time."

This finding is based upon a fiction of the imagination of three employees, now ardent A. F. of L. members, who testified inconsistently regarding the alleged statements of Sage, and it is made notwithstanding positive testimony to the contrary by highly credible witnesses. The only credible testimony in the record with regard to this matter is directly contrary to the finding.

(a) Sage to whom these statements are attributed is a man of 22 years' experience with respondent and beyond question a man of high caliber testified as follows with respect to these alleged statements:

"Q. Do you recall whether or not you made any mention of the names of Mr. Meyberg and Mr. Schoenfeld at that meeting?"

A. No. Their names were never mentioned." (Tr. 26)

When called as respondent's witness:

"Q. Mr. Sage, at that meeting that I have just mentioned, did you make any statement to

the effect that the Germain Seed Company, because of the financial condition or otherwise of Mr. Schoenfeld and Mr. Meyberg, was in a position to close up the plant?"

"A. No, sir."

"Q. Are you positive of that?"

"A. I am positive of that." (Tr. 564-5)

(b) The Board's own witnesses, Kadous (and he was discharged by respondent some months ago and certainly wouldn't be biased in its favor) recalled with regard to that first meeting:

"Well, I remember that we had a meeting on the shipping floor amongst the employees. There were mostly men present and Mr. Sage addressing the group and he asked—spoke in regard to forming a union and he brought up, well, the organization that he used to have there; and he thought it would be a very fine thing if we could form something of that order at this time and as far as I could see, most of them agreed with him." (Tr. 90).

Now, if Sage actually made the statements which have been attributed to him, it seems without doubt that these statements would have made a very strong impression upon the rest of the employees. Nevertheless, Kadous was able to recall the statements of Mr. Sage regarding the former employees' organization, etc., but he did not recall any such statements as those which are here attributed to Sage.

The only explanation can be that Sage never made such statements.

(c) Similarly, the Board's witness, Luck, did not recall any such statements by Sage as are here attributed to him. Not even by suggesting and leading questions could Board's counsel recall such statements to Mr. Luck's mind.

Now looking at the testimony upon which the Examiner bases his finding, the following facts are pertinent:

(a) The testimony of Hulphers which the Examiner so wholeheartedly accepts purported to be very accurate quotations of the statements which Sage had made at an impromptu general meeting almost four years prior to the testimony of Hulphers. It is interesting to note how uncannily accurate Mr. Hulpher's memory was on those things which were favorable to the Board and unfavorable to the respondent. For example, Hulphers, at that time the freight elevator boy, who had been working with the company for only a few months, testified positively as to the presence of Messrs. Sage, Hill, Gates, Hook, Luck, Nesbit, and Hatfield. He also set forth with uncanny detail the facts of this meeting; that Mr. Sage told them to take seats around; that they took seats around on the different platforms and piles of grass; that Mr. Sage stood on a small platform for loading and storage of sacks; etc. (Tr. 118-20). However, in contrast to this uncannily accurate

memory on these matters, Hulphers was not at all sure what day of the week the meeting was held, nor what time of the day the meeting was held, nor whether there were or were not women present. (Tr. 118).

This flexible memory of Hulphers can be readily attributed to his admitted bias against Consolidated. Hulphers himself testified

“Q. When was the first time that you thought that the Consolidated Seedsmen’s Union was dominated by the company?”

“A. Since its beginning.”

“Q. You thought it right at the start?”

“A. Yes, sir.” (Tr. 183).

Referring to the Hill Street meeting, he testified:

“Q. Then I believe you testified you did not attend the meeting. Is that correct?”

“A. That’s right.”

“Q. Why not?”

“A. Because I was against organizing a house union.”

“Q. And that is the reason you didn’t attend it?”

“A. That’s right.”

“Q. In other words, you have been against this from the start practically?”

“A. From the start I was against it because I thought it was started by the company. And I said ‘Being we had the union

started at all, let's go in there and try to make some of the Consolidated Seedsmen's Union give them a start and maybe this way we will get a wage increase, being the vote went that way. We would go—we would have anyone in the union as long as we could get enough money to live on, a monthly wage, so we could satisfactorily live on it.''' (Tr. 191-2).

In 1940, Hulphers at a Consolidated meeting asked for a secret ballot on disbanding the union. One example of the "accuracy" of Hulphers' detail testimony is his testimony that he got the results of the 1937 election on the afternoon of the day on which the election was held. (Tr. 135). However, Kadous, one of the tally clerks testified as follows on this:

"Q. I think in regard to this election you testified the ballot boxes were left one day and the employees given the opportunity to vote, and they were picked up and counted the next. Is that correct?"

"A. Yes." (Tr. 111).

How can the testimony of this witness be given any credibility whatsoever. His Charlie McCarthy recitation of precise "facts" damaging to the respondent and Consolidated were in such sharp contrast to his hesitating, head scratching testimony on matters he hadn't memorized that no unbiased person would give any

credit to his testimony. On top of this, the record shows beyond question by his own admissions that he has been prejudiced and biased against Consolidated from the very beginning.

(b) As far as gaining any support for this finding from the testimony of Yoakum, the very most that the Examiner could rely on was a conjecture. Yoakum, who at that time had been employed a few months doing general labor, when asked about the statements of Mr. Sage at the meeting, recollected directly statements of Mr. Sage such as the fact that there were a number of independent unions in the City which Mr. Sage understood were doing nicely and that he, Mr. Sage, felt that it would be a good thing if Germain employees did something along that line, and then testified:

“Then that is kind of the way it went. So I think that he did mention the fact that if we joined an outside union why the company also had plenty of money and they could close the doors down, and in order to keep the place going, maybe we had better, you know, have an independent union.” (Tr. 236).

Yoakum did not even recollect this until the matter was suggested by a leading question which put the words in his mouth.

(c) The testimony of Freeman (Tr. 276) upon which the Examiner relies does not in any way support the finding that the respondent

would prefer a house union to an outside union. Furthermore, the lack of credibility of this witness is well illustrated by the manner in which he paused before answering the questions of counsel for respondent during the cross-examination. While he was able to remember quite promptly and specifically the exact statements of Mr. Sage back in September, 1937, he was unable to remember the facts surrounding his joining the A. F. of L. as late as September, 1940. In fact he didn't even remember if he had discussed in September, 1940 his joining the A. F. of L. with the other employees (Tr. 286). In fact he paused so long after that question was asked that the matter was even noted by the Examiner. (Tr. 287-289).

Sage, to whom these purported statements are attributed testified unhesitatingly that he did not mention either the name of Meyberg or Schoenfeld at this meeting. Other of the Board's witnesses who recalled the circumstances of this matter and some of the things that went on there did not recall any such statements by Sage. Contrasted with this, we have the testimony of Hulphers, whose memory was flexible and whose testimony on other matters was contrary to much more reliable testimony, and whose extreme bias was admitted by Hulphers himself, and of Yoakum whose testimony was at most conjecture, and who could not even recall the statements on cross-examination until they were sug-

gested to him by leading questions, and Freeman whose entire testimony shows that he was primed to testify to these statements even though he didn't remember facts which had occurred seven months before the hearing. Yet the Examiner accepts the testimony of Hulphers, Yoakum and Freeman, disregards all other testimony, and brands Sage a liar. Such a finding as this one is, it is submitted, clearly erroneous and without any substantial evidentiary support.

But even though we assume that Sage said everything attributed to him by the charging union's little helpers, it is all immaterial unless Sage was actually an executive or received instructions from the management as to his statements.

Exception (9) On Page 5, Lines 10-11 the Examiner finds that Sage "held" a second meeting of the employees. Here the Examiner is confusing "held" with "arranged". It is true that Sage arranged for the meeting but it was held only in response to the request of the employees. This is shown by the testimony of Sage that:

"... So before the meeting was over they decided that they would like to have me bring someone in to organize them and incorporate them and asked if I could suggest someone, some legal man, to do that." (Tr. 24)

Exception (10) On Page 5, Lines 16-19, the Examiner finds, with respect to Voorhees at the second meeting in the early fall of 1937 that:

“He also informed them that employees having the right to hire, discharge or discipline or occupying executive positions could not belong to a union. Hill raised a question about his right to be present and was told that both he and Gates should leave.”

As thus stated, this finding suggests an inference which is contrary to the record. Hill asked about his status and then Voorhees made his statement as to certain types of employees being ineligible for union membership. He did not make a general statement of this effect to the group just out of thin air, but rather he made the statement in direct response to the inquiry of Hill's. This is pointed out by the testimony of Sage:

The Witness:

“Yes, sir. I believe it was Mr. Hill asked a question of Mr. Voorhees regarding his—the line of work he was doing there, and Mr. Voorhees answered the question and told he and Mr. Gates both that they should not be present at that meeting, and as I remember it they both walked out of the meeting right then and there.” (Tr. 30).

Exception (11) On Page 3, Lines 24-26, the Examiner referring to the second meeting finds:

“It was also suggested at this meeting that an election be held to determine the wishes of the employees before organization of an independent union was undertaken.”

To the extent that this finding implies that some persons contemplated formation of an independent union regardless of the outcome of an election it is contrary to the record and is just another example of the Examiner's reliance on his own imagination in order to support the Board's charges of company domination. The testimony of the Board's witnesses Kadous and Luck clearly refute any such inference. Kadous testified:

"Q. Now going back to this election that was held some time between the Voorhees meeting at the plant and the Voorhees meeting at the Hill Street store who suggested that such an election be held?"

"A. Well, the majority of the employees working there suggested that we had to have have some kind of an election and we decided that was the way to have it. To come to the proper conclusion as to which union we was to have." (Tr. 108-9)

"Q. In other words, there seems to be the choice between voting for a union or voting to have another talk by Mr. Meyberg. Do you remember any discussion of anything of that kind at the meeting?"

"A. Yes, I remember that *some of the fellows were undecided as to what to do*. They thought that the company—in fact I wouldn't say Mr. Meyberg—that the company in fact would give us what we wanted without forming

a union of any kind, and that was the idea of some of the employees that we approach Mr. Meyberg *before going into any union* and his talk was more or less along that line.” (Italics ours) (Tr. 114).

Luck testified:

“Q. In other words, how were you informed that an election was going to be held?”

“A. Well, there was constant talk all through the organization about this, and some of the fellows wanted to join the C. I. O. and some wanted to join the A. F. of L. Some of them were in favor of the independent union and some of them didn’t just exactly know the circumstances or conditions of any of them, and thought they ought to have a little more knowledge of the thing and maybe Mr. Meyberg could explain it. Tell what it was all about.” (Tr. 413).

The Examiner failed to note that the employees DID NOT TALK to Mr. Meyberg. This certainly would have been the case, following such a suggestion, had the meeting been company controlled or dominated.

Exception (12) On Page 5, Lines 31-32, the Examiner finds that “the source and authorship of the ballots is not established by the record.”

True, this is not established by the record, but the only normal inference would be that Voorhees

prepared it. The Board, knowing this would be an issue could easily have asked Voorhees about this, but it did not do so.

Exception (13) On Page 5, Lines 49-50, the Examiner refers to Clark, Frauenberger, Luck and Hook as follows:

“all found herein to be representatives of management”

We except generally to this absurd finding and in dealing with a subsequent part of the report we will discuss this finding with respect to the individuals named. (See Exception 16, *infra*.)

Exception (14) On Page 5, Lines 46-48, the Examiner finds that:

“A pre-organizational committee was then created, composed of employees from the various departments. None of the witnesses including members of the committee was able to explain how the committee was chosen.”

By this statement the Examiner seeks to infer that the committee was chosen by the management or someone on their behalf. The circumstances clearly refute any such an inference. The reasonable inference would be that the group of employees just informally agreed upon this group to get things started. These individuals who formed the committee and circulated the petitions had no difficulty in getting the signatures of a large majority of the employees. (Board's Exhibit 3). On top of that and of still greater significance is the fact that at the

first general meeting of Consolidated on September 14, 1937 of the seven members of the pre-organization committee (see Board's Exhibit 3), three were elected by the employees to be assemblymen and two others were elected by the employees to be department representatives (Board's Exhibit 17-C). This pretty clearly shows that this committee was truly an employee committee and rebuts the innuendo of the Examiner's finding.

Exception (15) On Page 6, Lines 4-5, the Examiner finds that the circulation of the pre-organization petitions and the collection of initiation fees:

"were carried on during working hours about September 1, 1937."

The only testimony respondent could uncover in the record supporting the finding that solicitation for Consolidated memberships was carried on in the plant on company time is the testimony of Hulphers. (Tr. 150-151). On the other hand, Hulphers himself testified that he signed his application for membership in Consolidated during a noon hour. (Tr. 139). Further, the following evidence would seem to indicate pretty clearly that no such solicitation occurred:

Yoakum testified:

"Q. Have you or have you not personally observed at any time any solicitation for membership in the Consolidated Seedsmen's Union?"

“A. No, sir.” (Tr. 242).

Freeman testified:

“Q. All right, have you ever at any time observed any solicitation for membership for the Consolidated Seedsmen’s Union?”

“A. I don’t.”

“Q. You have never observed any?”

“A. No.” (Tr. 280).

Frauenberger who circulated one of the petitions testified that he did so on his own time during his vacation and that he contacted the men outside the plant. (Tr. 304).

In the light of such evidence, it is rather difficult to see how the Examiner could find that any solicitation for Consolidated was carried on in the plant during working hours; but most important is the fact that there is no evidence that the pre-organization petitions were solicited in the plant on company time, and such a finding is the product of the creative mind of this Examiner who is grasping at straws to support his biased viewpoint.

Exception (16) On Pages 6 and 7, the Examiner makes a number of findings as to the duties of several individual employees and also a finding as to their status. Respondent excepts in general to these findings and will discuss the findings regarding the duties of these employees individually. Thereafter, respondent will discuss the findings of the Examiner as to the status of the individual employees.

Fraunberger

With respect to Fraunberger, the Examiner found that:

“He was charged with the duty of relaying Hill’s orders to the truck drivers, distributing work to them and directing their work, routing the trucks, checking out the loads, helping load the trucks and attending to complaints concerning deliveries.”

The first part of this finding:

“He was charged with the duty of relaying Hill’s orders to the truck drivers”

is a correct statement of a function performed by Mr. Fraunberger. However, the additional statement that:

“He was charged with * * * distributing work to them and directing their work”

is contrary to fact and is not supported by the record. This statement coming after the previous statement that he relayed orders to the truck drivers infers that in addition to relaying orders to the truck drivers he otherwise distributed work to them. This is contrary to fact and has absolutely no support in the record. The statement that he directed their work is absolutely unfounded. The statement that he routed the trucks directly contradicts the testimony of Mr. Fraunberger himself and has no support whatever in the record. Fraunberger testified with respect to his duties as follows:

“Q. Can you tell us what you did at that time?”

“A. Check the loads out and help the boys load, attended to the air tubes and the complaint calls and things of that sort.”

“Q. Did you act as dispatcher at all for the trucks?”

“A. Well, on order of Mr. Hill.”

“Q. On order of Mr. Hill?”

“A. In other words, we had a group of orders every morning that were for the boys to handle,——”

“Q. I see.”

“A. —and it was on his orders.”

“Q. In other words, as I understand it, the trucks were routed by Mr. Hill. Is that right?”

“A. No. There was no specific routes at all to follow. It was just as the work came in for the day, they had certain territories to cover, but the routes weren't exact——”

“Q. I see.”

“A. —on every trip, and a great many times the boys would route their own orders. In fact, that was the general practice.”

“Q. Would you relay Mr. Hill's orders to the truck drivers?”

“A. Generally speaking, yes. There was the orders for the day and there was an amount of work to be done; and everybody knew the amount of work that was to be done. In other

words, they tried to load the trucks as soon as possible and get them out, so the boys would have plenty of time to finish their work in the day time. It was work that everybody knew the general procedure." (Tr. 293-4.)

The record is devoid of evidence to support a finding that Fraunberger distributed work to the truck drivers, other than merely relaying Hill's orders to the drivers, or that Fraunberger in any other way directed their work. The contention of respondent that this finding is erroneous is further shown by the testimony of Fraunberger regarding the conduct of the work in the absence of Hill:

"Q. Now, when Mr. Hill is sick, or for any other reason he is absent, who has charge of that shipping department?"

"A. No special one. There is a certain amount of work that has to be done and, well, it travels along just by itself, you might as well say, because most of the employees there have been there a great many years and they know their different positions without being coached every minute of the day or every day."

. . .
"Q. When he is absent, is there anyone responsible for the truck drivers besides yourself?"

"A. By the word 'responsible,' what do you mean, Mr. Cobey?"

"Q. I mean, in other words, these truck

drivers coming in and out, certain orders are being given to them, aren't there?"

"A. That is still the natural procedure of the day's work. In other words, there are pick-ups that come in from the different buyers, and the package department will need that, and if you have an empty truck, you don't run to Mr. Meyberg or Mr. Hill. You know that work has to be done. It is just automatic work that comes through."

"Q. Now, the planning Mr. Meyberg does, as I understand, when he is absent, who does that?"

"A. Generally speaking, the drivers themselves have done it themselves. In other words, there may arise a question that a stop will be off a territory, and he lets,—the stop, rather, is given to another truck driver. And that is the morning's argument and getting ready for the day's work."

"Q. Are those things referred to you?"

"A. Not necessarily. Sometimes they have been, but that has been just the natural procedure. The same question might arise between drivers. They may say, 'You are going over to the southwest. How about taking this with you?' " Tr. 295-6).

The only possible evidence that could support a contention that Fraunberger routed the trucks is the statement by Kadous that

"he routed all the bills for the truck drivers."

This statement was made by Kadous along with a number of other general statements as to Mr. Frauenberger's duties, the crucial portion of which testimony by Kadous was stricken out on motion of counsel. Frauenberger had no power to hire or fire any employee, nor did he have the power to recommend hiring or firing; this by the uncontradicted testimony of both Frauenberger and Meyberg.

The uncontradicted testimony of Meyberg clearly shows that Frauenberger had no power to hire, fire or discipline any employee. Referring to the duties of Frauenberger, Meyberg testified as follows:

"Q. What about Mr. Frauenberger? At that time he was a shipping clerk—that is prior to the last position that he had. What about his position at that time?"

"A. He had charge of deliveries."

"Q. City shipping rather?"

"A. City shipping, yes. He had no rights in connection with labor in any instance."

"Q. He doesn't hire or fire?"

"A. No."

"Q. Or didn't have the power to hire or fire?"

"A. No."

"Q. Or to recommend hiring or firing?"

"A. No." (Tr. 566-7).

The Examiner can't "wish" Frauenberger into a supervisory status where in fact he had no such position. Watson, who succeeded Fraunberger and took over his identical duties (Tr. 567) was an A. F. of L. member (Tr. 376) but apparently, in the Examiner's mind, that removed HIS supervisory status. Consistency, even in a trial of this character, retains some virtue!

Nesbit

The Examiner finds that:

"Nesbit denied that he was in charge of this floor but explained that 'my idea of being in charge is being in charge . . . so as to hire and fire.' The testimony of Yoakum, Loy and Hulphers, credited by the undersigned, establishes that Nesbit directs the work of the other employees on the fourth floor."

Any inference that the Examiner might be attempting to present from his quotation of Nesbit's testimony is clearly refuted by other portions of Nesbit's testimony such as:

"Q. Who assigns the work to the men on the fourth floor?"

"A. Well, there is really no one that assigns the work. That is, the daily orders—they come in and the men that works there know what it is and they have to go out and then tell them to make deliveries and what work is to be done." (Tr. 370-1).

“Q. Have you ever made any comments upon the work performed by the men working with you to Mr. Gates or Mr. Hill?”

“A. No. Only when I have been asked when they come to me and ask me if—which man has been there longer, then I can tell them because I know, but of course that record is in the office, they can find out.”

“Q. In connection with layoffs, do they ever come to you and ask you about which man should be laid off?”

“A. No, sir.”

“Q. They don’t?”

“A. Only like I said. If one man has seniority.”

“Q. Nobody has ever asked you as to the quality of the work done by the other men up there on the fourth floor?”

“A. No, sir.” (Tr. 371-2).

The Examiner refers to testimony of Yoakum, Loy and Hulphers which he credits as establishing that Nesbit directs the work of the other employees on the 4th floor. Yoakum who by his own testimony had worked on the same floor as Nesbit for only about a month prior to the hearing (Tr. 231) testified as follows:

“Q. Are your assignments of work given by Mr. Nesbit?”

“A. Yes, sir.” (Tr. 232).

Trial Examiner Paradise: "When you say that you take orders from him, what sort of orders do you take?"

The Witness:

"Well, if there is something in stock he wants piled or some order he wants packed, then I pack it." (Tr. 233).

Loy who had worked for respondent and on the same floor as Nesbit for only a few months in 1940 (Tr. 541) testified as follows:

"Q. Under whose supervision did you work?"

"A. Mr. Nesbit."

"Q. Who gave you your assignments of work?"

"A. Mr. Nesbit." (Tr. 542).

Here we have two employees working on the same floor as Nesbit both of whom were beginners. It was only natural that Nesbit having been on the floor longer than any others there should help these new men get into the swing of things and help them learn all there was to be done on that floor. To say that this testimony of these beginners establishes that Nesbit directed the work of the other employees on the 4th floor certainly is ridiculous. As to the alleged testimony of Hulphers, anyone who can read can see from the record that there is no such testimony.

Even though we take the testimony of Yoakum and Loy as gospel it would only make Nesbit a

gang leader. There isn't any union in the country which wouldn't admit him to membership and the Board knows it.

Luck

The Examiner found that Luck supervised and inspected the work of the other employees in the bulb department on the 3rd floor, and that he took care of the invoices and the buying.

Luck worked in the bulb department under the supervision of Pieters where Luck was, during the slack season, the sole employee, and where there were never over three or four employees. Pieters was in charge of this department. This then is the true picture: Luck does all the work in the bulb department during the slack season of the year; during the rush season two or three other employees are brought in to assist. Luck knows how the work should be done, whereas the seasonal employees may or may not be familiar with the work; and when Luck sees that the work is not being gotten out as it should be, he refers this problem to the boss, Pieters, who takes care of the matter. In such circumstances it is ridiculous to call Luck a supervisory employee.

The record does not support the finding that Luck "supervises" the work of the other employees on this floor during the rush season or that he "inspects" the work of the other employees on this floor during the rush season. Likewise, the record does not support the finding that he was taking care of the invoices and the buying.

Hook

The Examiner finds that:

“Hook testified (referring to the additional employees in the milling department and to the ‘bull gang’) . . . that he is responsible for the proper performance of their work and that he guides and instructs them in their work, and that ‘if they don’t do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do.’ ”

Hook for a number of years has worked in the milling department where is at times the only employee. When seed comes in, Hook, who operates the mill, decides where the seed can be placed so as to be more convenient for the operation of the mills, and he tells the ‘bull gang’ who move the seed in to put it in the spot which he chooses. This fact is used by the Examiner as a basis for finding that Hook testified that he relayed the orders of Gates to the ‘bull gang’ and that he was responsible for the proper performance of the work of the ‘bull gang’ and that he guides and instructs the ‘bull gang’ in their work. How perfectly absurd these findings are when one reads the testimony of Hook which is as follows:

“Q. Have you had anything to do with the bull gang?

“A. Yes.”

“Q. Will you tell us what you had to do with the bull gang?”

“A. Well, as seed comes in, I got to have the seed where it can be handed to the mills and I go to Mr. Gates, the foreman, and he says to me ‘have it put wherever you want it’ and I put it in a likely spot where it can be got at for the mills.”

“Q. In other words, you tell the bull gang where to put it?”

“A. Yes. I don’t order them, I just ask them to do it.” (Tr. 327).

Hook did testify that he relayed orders of Gates to the additional seasonal employees in the milling department. His testimony regarding these orders was as follows:

“Q. What sort of orders?”

“A. Well, he gives me a sheet with the record of the seed, whether it is quarantine or nonquarantine seed, and I have to take this seed and clean it, get the noxious weeds or non-noxious weeds, whichever he wants out, and, I have to get this piled down and get it to them, get it to the mills. If I have no help, I have to do it myself. Sometimes it is heavy and sometimes it might run from two sacks to a thousand sacks, and naturally, I have to have help and I have to ask him for some help, and when I do that, he will tell me to get such and such a man working on five to help me. Naturally, he tells me which man it is, and sometimes I have to have them help me on the mills, but I regu-

late the speed and how fast they put it in, and all that.”

“Q. And do you tell Mr. Gates when you need additional men to work on your floor?”

“A. Yes, sir.”

“Q. You tell him you want to put a couple more men on the mills?”

“A. No, sir. I don’t tell him to put a couple more men on. He generally uses his own judgment, whether I need any more men. Sometimes I have to ask him. Sometimes the seed runs so fast and the machines are running so I have either to shut them down or ask for more help.”

“Q. I see. And when the work starts to fall off, do you make any recommendation to Mr. Gates about letting some people go?”

“A. No, sir.” (Tr. 334-5).

Hook being the only regular employee in the milling department feels a natural responsibility to see that the seasonal employees don’t destroy a lot of seed, and he testified that he was responsible for the seed and if it was run wrong. However, this is not at all a basis for finding that “he guides and instructs them in their work.” Furthermore, even if he does teach new employees the “tricks of the trade” that is wholly irrelevant on the question as to his status as a supervisory or nonsupervisory employee. As is established by the uncontradicted testimony of Meyberg, Hook has no power to hire or fire anyone, nor has he any power to recommend

the hiring or firing of anyone. (Tr. 566). It is admitted that he does manual work along with the seasonal employees in the milling department.

Hatfield

The Examiner finds that "he has one or more helpers as the work requires" and that "he directs and supervises the work of his helper or helpers and is responsible for the proper filling of seed orders." The first finding referred to is not correct. Hatfield testified as follows:

"Q. Fifth and sixth floors. Were any people working up there with you at that time?"

"A. Well, yes and no. I have a man when I have a need for him, otherwise I do it myself." (Tr. 361).

Correctly stated, Hatfield does all the work himself except when he has need for one helper, and he does not as the finding of the Examiner intimates have a helper there all the time. At no time has Hatfield reported to his superior Gates as to the quality of work that is done by his helper or helpers. (Tr. 366). Having a helper doesn't make an employee a supervisor. This really is a novel twist.

Before making his finding with respect to the status of these individual employees, the Examiner makes another finding regarding a request by Consolidated for "a better allotment and statement concerning sub-foremen and their positions." He finds that:

“on December 22, 1937 the Consolidated issued a notice to its members setting forth ‘agreements obtained’ from the respondent. One of the items claimed to have been agreed to was ‘a better allotment and statement concerning sub-foremen and their positions.’” (footnote 7).

However, the notice itself (Board’s exhibit 12-B) was a notice only to Division 3 and there is no evidence that any such notice was given to the members of Consolidated generally. Furthermore, the uncontradicted testimony of Hook was:

“We was never sub-foremen. We was never admitted to being foremen at all.” (Tr. 339).

and of Hatfield (Tr. 363) regarding Board’s Exhibit 12-B clearly refutes any inference from the findings of the Examiner that Consolidated and respondent came to any agreement as to the status of these individuals as sub-foremen. If they were already sub-foremen—though this would not make them ineligible—why did they make a request **TO BE MADE SUB-FOREMEN?**

Conclusions of Examiner as to Status of Individual Employees

The Examiner concluded that these five men “were working foremen with supervisory authority,” “that their interests were closely identified with those of the management,” and “that in assisting in the organization of Consolidated they (along

with others) appeared to be and were acting in furtherance of the wishes of the respondent as expressed by Sage." Any unbiased analysis of this group of findings and even a casual consideration of the evidence clearly demonstrates that they are Examiner created and out of whole cloth.

Fraunberger

As we have shown above the finding that Fraunberger was charged with distributing work to the truck drivers and was directing the work and that he routed the trucks is absolutely without foundation. When it is recognized that this finding is erroneous, a finding that Fraunberger was a working foreman with supervisory authority is ridiculous.

Respondent is at a loss to understand what the Examiner uses as a basis for his finding that Fraunberger's interests were closely identified with those of the management. There certainly is no evidence to support any such finding, nor is there any evidence to support a finding that in his activity in the organization of Consolidated, he appeared to be or was acting in furtherance of the wishes of respondent.

Secondly, Fraunberger himself testified that prior to the second meeting he occupied no position whatsoever, excepting that of an onlooker. He testified:

"No. I wasn't associated with the management or of the meetings, the calling of the

meetings of the different groups, together at this time. I was just an onlooker.” (Tr. 301).

There certainly is not the flimsiest bit of evidence to tie in the acts of Frauenberger with the management of respondent.

Nesbit

As we have pointed out above, the finding of the Examiner that Nesbit directs the work of other employees on the 4th floor is without support from the record. However, even if the evidence which the Examiner credited is acceptable, it should be noted that this testimony by Yoakum and Loy was related to the activities of Nesbit between February and October, 1940 and for the month just prior to the hearing. Certainly it cannot be contended that such evidence has any bearing upon his status in the fall of 1937. Even if one were to shut his eyes and accept the finding of the Examiner as to the duties of Nesbit, one cannot possibly accept the conclusion that such evidence supports a finding that he was a working foreman with supervisory authorities, whose interests were closely identified with those of the management, and who in assisting in the organization of Consolidated acted in furtherance of the wishes of respondent. This conclusion just like the conclusions with respect to these other individual employees is based upon the desire of the Trial Examiner and has no evidentiary support.

Luck

In our discussions *supra* we have shown that the Examiner's finding that Luck supervised and inspected the work in the bulb department was without support from the record. Stripped of this finding, there is absolutely no basis for the conclusion by the Trial Examiner that Luck was a working foreman with supervisory authority; that his interests were closely identified with those of the management; and that in his activities in the organization of Consolidated he was acting in furtherance of the wishes of respondent.

Hook

Little need be said to refute the Examiner's conclusion as to the status of Hook. In the first place, none of the findings with regard to Hook's duties, even if accepted as true which they are not (see *supra*), would justify a conclusion that Hook was a supervisory employee, and of course here again as in the case of Fraunberger, Nesbit, Luck, and Hatfield, neither is there any evidence nor is there even any finding by this Examiner which would in any way support the conclusion that the interests of Hook or of these others were closely identified with the interests of the management, or that in their activities in the organization of Consolidated they carried out any wishes of the respondent, if the respondent had had any wishes at all in this matter. Furthermore, the fact that Hook in September of 1940 prepared a petition for wage increases which

petition was to be presented through Consolidated to the company (Tr. 346-8) is hardly consistent with a contention that the interests of Hook were identical with the interests of the management. In fact this petition called for a minimum wage of \$110.00 per month, and when compared with a contemporaneous petition requesting a 10% raise from minimums of \$65.00 and \$70.00 a month, it becomes readily apparent that Hook was not "contaminated" by any connection.

Hatfield

The conclusions as to the status of Hatfield need hardly be mentioned. Here is a man who part of the time may have one helper and very rarely may have more than one helper, and even when he does have a helper, he has no authority to hire, fire, or discipline him; yet he is classified as a supervisory employee. Hatfield is now an A. F. of L. member though his work hasn't changed a bit.

Here it should further be noted that if these men were petitioning for a status of sub-foremen, it must be evident that they did not already have such positions. And furthermore, the fact that these requests were not granted is further evidence that these men were not considered as nor intended to be supervisors.

There are certain rules by which union eligibility of employees is judged. These have been set forth by the Board in innumerable R-cases. We defy the Examiner to point out one such case in which em-

employees such as these were ineligible to union membership. If they are eligible to union membership then they have the right to engage in union activities. There can be no other answer. Frankly, it is impossible to conceive of a more unwarranted finding than that of the Examiner that these employees were supervisors. Obviously the Examiner felt that in order to sustain the Board's case, he must find these five individuals to be supervisory employees. He did it but it certainly required some tongue-in-the-cheek evidentiary gymnastics. This is apparent to anyone who reads the record.

We respectfully submit that these conclusions as to the status of these employees are without any foundation whatever and are patently erroneous. Even accepting the findings of the Examiner as to the duties of these individual employees, his conclusions are erroneous, and as we have shown above his findings as to the duties of these individual employees are grossly in error in every material respect.

The statement that Hill and Gates took part in the organization of Consolidated on behalf of the management is, of course, clearly untrue.

Subsequent History of the Consolidated

Exception (17) On page 8, lines 9-10 the Examiner, after referring to a letter from Consolidated to respondent in which letter Consolidated referred to "making definite agreements", found that:

“It does not appear that anything further was done toward obtaining definite agreements.”

If by this finding the Examiner means to find that Consolidated did not thereafter obtain any definite agreements with respondent, the finding is in error. Luck directly testified that they did come to definite agreements with respondent and that while the agreements were not in writing, they were not signed by respondent

“with the understanding that there was no necessity of having them signed, that the agreement was an understanding and would be followed through as readily—the verbal understanding as well as a written one.” (Tr. 441).

It should be noted that when the Examiner referred to the written agreements, which Luck testified he had drawn up, as “agreements which the union requested and were not granted,” Luck hastened to state:

“I wouldn’t say the agreements weren’t granted. They weren’t granted in writing.” (Tr. 442).

Futhermore, as far as these “suggestions” are concerned, no written agreement embodying them was ever submitted to respondent. (Meyberg Tr. 573).

Exception (18) In Footnote 8, page 8, lines 58-61, the Examiner finds that:

“The minutes of a meeting of the Consolidated held on August 20, 1940, show that one of the employees proposed that the Consolidated obtain a signed agreement, to which the President replied that this could not be done.”

This finding by showing only part of the picture evidences the same bias against respondent and Consolidated as so many of the other findings of this Examiner. The Examiner here tries to show that due to company domination the Union was unable to force the management to sign a contract. Respondent has already shown (Exception 17 *supra*) that the officers of Consolidated took the respondent's word to be as good as any signature. Now the “President” referred to in this finding who stated that Consolidated could not get a signed contract was Watson. (Board's Exhibit 13-A). This same Watson was the one whom the Board of Directors of Consolidated voted out of office on September 23, 1940 because of his A. F. of L. affiliation. (Board's Exhibit 22). It should be apparent to anyone that this statement of Watson's was a self-serving declaration made by one who had interests in a union other than Consolidated, and who had interests in disrupting Consolidated.

Exception (19) On page 8, lines 18-19, the Examiner referring to a “weenie roast” held by Consolidated on July 30, 1938 finds:

“Although the record does not show the precise nature of the respondent’s contribution on this occasion . . .”

Mr. Meyberg testified that respondent had given Consolidated some money to buy some ice cream on a picnic, loaned them a truck for a picnic, paid a traffic ticket for one of the boys that drove the truck, and gave some cigarettes as prizes in connection with a baseball game. (Tr. 568). This paragraph of the Report sets forth all the social activities in which respondent gave anything to Consolidated. From these very findings, it is quite evident that the “contribution on this occasion” was the furnishing of some ice cream by respondent for the picnic.

On this same matter, the Examiner also found (lines 22-24) :

“It also appears that Meyberg gave the Consolidated the use of the shipping floor in the warehouse for a dance held in October, 1938.”

This finding inferring that the use of the warehouse was given free is not supported by any evidence and is contradicted by the testimony of Meyberg wherein he sets forth the property OR OTHER THINGS OF VALUE respondent gave or donated to Consolidated since its inception. (Tr. 568).

The Examiner’s emphasis on matters of this character clearly indicates his desperation in trying to make a case against respondent and Consolidated.

Did he forget that these things were done AFTER Consolidated was the bargaining agent? Does he have some ideological background which requires him to censure such a relationship between employer and employees?

Exception (20) On page 8, lines 26-31, the Examiner makes certain findings regarding the submission of lists of unemployed members and delinquent members to Meyberg and finds:

“Although Meyberg denied having requested lists of delinquent members, he admitted that he received such lists and stated that he used his own judgment in acting on them.”

If by the matter of his statement the Examiner means to infer that something else in the record indicates that Meyberg did request such lists, he is in error. There is nothing in the record which in any way refutes this denial of Meyberg's. Furthermore, all of this occurred after respondent had recognized Consolidated as the bargaining agent. Respondent recognized Consolidated as the bargaining agent on October 1, 1937 (Board's Exhibit 18-B). The first date definitely fixed upon which such a list was submitted to Meyberg is February, 1939 (Board's Exhibit 29-F), almost a year and a half after Consolidated had been recognized by respondent. Furthermore, these findings are misleading in failing to point out that Consolidated submitted to respondent a proposed agreement, em-

bodying this preferential hiring principle (Respondent's Exhibit 4), but that respondent neither signed such agreement nor orally agreed to it. Referring to this proposed agreement, Meyberg testified as follows:

(By Mr. Watkins)

"Q. I will ask you, Mr. Meyberg, whether or not the company ever agreed to this respondent's Exhibit 4 either in form or substance?"

"A. Absolutely not." (Tr. 576).

Exception (21) On page 8, lines 44-56 and page 9, lines 1-9, the Examiner makes certain findings regarding an alleged conversation between Thrift and Hill, and finds that Hill asked Thrift if he belonged to "the union" and that when Thrift replied in the affirmative, Hill stated to Thrift:

"Well, that makes it sort of bad, Jack, because I intended to keep you on here. Now I don't know what to do about it . . . to my notion, the A. F. of L. and the C. I. O., all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C. S. U. (Consolidated) as well, they are taking care of you here, whereas the dues you are paying into the A. F. of L. is doing you no good. We don't want the A. F. of L. in here or any other union."

and that Hill then asked Thrift if he could get a withdrawal card (from the A. F. of L.). He also

finds that at that time Thrift's job was in jeopardy.

Frankly, respondent is surprised that even the Examiner should give credit to the testimony of this witness. Regarding this very conversation, Thrift on cross-examination contradicted himself. On direct examination, he testified as follows:

"A. I told him then that I belonged to the A. F. of L., in fact, I had joined some four months previous to my employment there.

"And he says, 'Well, that makes it sort of bad, Jack, because I intended to keep you on here.' And he said, 'Now, I don't know what to do about it.'

"And then he said 'Well,' he said, 'this is, to my notion, the A. F. of L. and the C. I. O., *all these unions*, are a bunch of leeches,' he said, they feed off of the——" (*Italics ours.*) (Tr. 492-3).

However on cross-examination, he testified as follows:

The Witness:

"He says, '*This union* is a bunch of leeches who feed off of the efforts of others.'"

(By Mr. Watkins)

"Q. Did he say which union he was talking about?"

"A. No."

"Q. He just said '*this union*'?"

"A. Yes."

(By Mr. Watkins)

“Q. Did he or did he not mention any specific union?”

“A. No, he didn't say ‘A. F. of L.,’ or nothing. He just said, ‘this union’.”

“Q. All right. What was said after that?”

“A. Well, after that he said that—oh, he said that—he said, ‘What you are doing is paying dues into the A. F. of L.’ That is when he mentioned the A. F. of L.”

“Q. *This is the first time he mentioned the A. F. of L.?*”

“A. Yes. He says, ‘What you are doing is paying dues into the A. F. of L., which is doing you no good at this time, and the dues that you are paying into the Consolidated Seedsmen's Union are the ones that are helping you out.’”

“Q. Did he say during this conversation that that was the first time that he had known that you were an A. F. of L.?”

“A. No.” (Italics ours.) (Tr. 513-514).

The alleged statement of Hill:

“Well, that makes it sort of bad, Jack, because I intended to keep you on here . . . now

I don't know what to do about it.” (Tr. 493). clearly implies that this was the first knowledge by Hill that Thrift belonged to the A. F. of L. This is hardly consistent with the fact that Thrift had at that time been wearing his A. F. of L.

button for over a month, or with the testimony of Thrift himself that Hill had seen his A. F. of L. button. (Tr. 515).

Another instance in Thrift's testimony which well illustrates his lack of credibility is his testimony that he had not discussed his pending layoff with Consolidated. (Tr. 516, 519-21). The "stumbling" testimony of Thrift on redirect examination should be noted. He testified as follows:

"Q. (By Mr. Cobey) Now, Mr. Thrift, I think you testified in response to Mr. Watkins' questions, that, to your knowledge, you never took up the matter of your possibility of your being laid off with any representative of the Consolidated Seedsmen's Union?"

"A. I did or did not?"

"Q. I think you testified that you did not. What is the—I mean, what is your recollection on that point?"

"A. Whether or not I took it up with any——"

"Q. With any representative of the Consolidated Seedsmen's Union?"

"A. Well, I took it up to this effect, that I told—oh, you mean about me getting laid off? I thought you were talking about over time again." (Tr. 519).

This testimony should be compared with the following excerpt from the minutes of a special meet-

ing of the Board of Directors of Consolidated. (Board's Exhibit 34-C.):

“Mr. Butterfield asked what was to be done about the approaching layoff of Jack Thrift, a member of the Consolidated Seedsmen's Union. Mr. Meyberg stated that he was trying to fill him in at the present time, and would see what could be done about keeping him employed.”

Exception (22) On page 9, lines 26-29, the Examiner finds that:

“Thereafter as appears from the uncontradicted testimony of Loy, which is credited by the undersigned, the members of the Consolidated were informed by their representatives that ‘it was absolutely impossible to get a raise.’ ”

The only basis for this finding is the testimony of Loy that someone told him that it had been said at a meeting of Consolidated that it would be impossible to get a raise of any kind. (Tr. 556). There is no testimony at all as to who made the statement which “somebody” is supposed to have told Loy was made. To use such testimony as a basis for the finding that the “members of Consolidated were informed by their representatives” that they could not get a raise seems to be a far stretch.

In connection with this same matter, the Examiner refers to a meeting in Meyberg's office and finds that:

“Hulphers acted as spokesman for the employees and reiterated the substance of what had been told Meyberg that morning.”

This finding that Hulphers acted as spokesman for the employees is contradicted by the testimony of Loy upon whom the Examiner just previously so religiously relied. Loy testified:

“Q. Can you tell us what happened at this meeting?”

“A. Yes. There really wasn’t much said. He wanted to know, asked a few questions, and we didn’t have any speaker, and some fellow got up that was supposed to be a vice president of the Seedsmen’s Union, and designated Eric Hulphers as the speaker and he pointed him out, and we had a little argument, I believe, and I told him to sit down.”

“Q. Was that Erich Regan that got up?”

“A. Yes, I believe it was Erich Regan. It was none of his business, and told him to sit down, that there was no speaker to the meeting, it was Mr. Meyberg’s meeting, and he was going to do the speaking. So then he started.”
(Tr. 549).

Exception (23) On page 9, lines 48-60 and page 10, lines 1-20 the Examiner makes a number of findings regarding the October, 1940 wage increase. These findings will be dealt with separately in this exception.

(1) On page 9, lines 47-55, the Examiner refers to a movement for a wage increase in the fall of 1940 and finds:

“That this move for wage increases was a move by the employees themselves wholly apart from Consolidated is established not only by the testimony of Loy and Hulphers, but also by the following statement contained in the minutes of a meeting of the Consolidated on September 13, 1940 . . .”

Frankly, respondent is at a loss to find evidence in the record to support this finding. The minutes of the August 20, 1940 meeting of Consolidated (Board's Exhibit 13-A) show that:

“Bill Epperson suggested that petitions be gotten up by the directors of the different departments of all three branches and if a majority signed, they could be taken to Mr. Meyberg.”

In September of 1940, Montgomery suggested to Hook a movement for a general wage increase. Regarding this suggestion by Montgomery, Hook testified as follows:

“A. Yes, I believe that is his name; a truck driver. And I told him at the time I couldn't do anything unless it was through the union, and I didn't want——”

“Q. That is the Consolidated Seedsmen's Union?”

“A. Yes, sir.”

Trial Examiner Paradise: “Excuse me for interrupting. What was it Montgomery wanted you to do?”

The Witness: “He wanted me to go before the firm and ask for the raise. I told him the proper manner was to get up a petition, under the sanction of the union, the Consolidated Seedsmen’s Union, to present to the company in the proper, legal manner, and I didn’t want anything to do with that way of doing business.” (Tr. 346-347).

Thereafter Hook prepared a petition and circulated it among the employees. Another petition was prepared about that time by Butterfield, who was then president of Consolidated (Tr. 203). Both of these petitions were subsequently presented to Meyberg or Butterfield. The true nature of this movement for a wage increase in the fall of 1940 is very well shown by the testimony of Hulphers who testified as follows:

“Q. (By Trial Examiner Paradise) Just one question or two about Board’s Exhibits 13-A and B. In Board’s Exhibit 13-A, which is the minutes of the meeting of the Consolidated Seedsmen’s Union of August 20, 1940, it is stated that you reported that the men on floors four five and six were dissatisfied with the wages and they wanted a petition circu-

lated for a \$25 a week minimum wage. Do you recall having made such a report?"

"A. Yes, sir."

"Q. Then it is further stated that Bill Epperson suggested that petitions be gotten up by the directors of the different departments of all three branches, and that if a majority signed they could be taken to Mr. Meyberg. Do you remember that?"

"A. Yes."

"Q. And then it is stated that you, Eric Hulphers, moved that each department have a petition made up with wage scales, to be signed by each employee. Do you remember that?"

"A. Yes."

"Q. And that that motion was carried?"

"A. Yes."

"Q. Do you recall that?"

"A. Yes."

"Q. Now, as a matter of fact, was there a petition gotten up for each department, pursuant to that motion?"

"A. Not to my knowledge."

"Q. Well, do you recall what, if anything, was done to carry out the motion which, according to the minutes, was carried?"

"A. No. I have never seen anything."

"Q. Now, did I understand you to testify that at this meeting in Mr. Meyberg's office on

the 3rd of September that Mr. Butterfield presented a petition?"

"A. He presented both petitions."

"Q. What do you mean when you say 'both petitions'?"

"A. The petition for the upper floor, and another petition that Mr. Butterfield had got a lot of women's names on and, oh, other names from the other parts of the building."

"Q. And what, if anything, did he say when he presented the petitions? Do you remember?"

"A. He said, 'Here are—I want to present you with these petitions, Mr. Meyberg,' and he stepped up and laid them on his desk." (Tr. 203-205.)

Further testimony of Hulphers upon whom the Examiner relied shows that even Hulphers understood the movement to be one by Consolidated. Hulphers testified regarding the meeting in Mr. Meyberg's office as follows:

"Q. When he asked you who was the speaker for the group and pointed you out, why did you sit silent and tell him you didn't want to say anything?"

"A. Because the vice-president of the Consolidated Seedsmen's Union was there, and I figured it was his place to do the speaking and to carry on the meeting." (Tr. 185).

So far as any testimony of Loy sustaining this finding by the Examiner is concerned, his testimony

previously quoted (Exception 22, *supra*) would seem to show pretty clearly that it was not his understanding that Hulphers was leading this movement for a wage increase.

(2) On page 9, lines 59-60 and page 10, line 1, the Examiner finds that one of the petitions

“had been sponsored by a group led by Hulphers called for a substantial wage increase.”

The true facts as to the so-called “sponsored by Hulphers” petition are these: at the August 20, 1940 meeting of Consolidated, Hulphers started the ball rolling.

“It was moved by Eric Hulphers and seconded by Bill Eperson that each department have a petition made up with wage scales to be signed by the employees. Motion carried.” (Board’s Exhibit 13-A.)

Thereafter Hook, then a director of Consolidated, prepared the petition which was presented by Butterfield to Meyberg. Considering the testimony of Hook quoted *supra* that the only way he would do anything in this matter was through Consolidated and considering that these petitions were initiated at the August meeting of Consolidated and that they were presented by Butterfield, the president of Consolidated, to Meyberg at the meeting in which Hulphers by his own testimony refused to take any active part, it certainly takes quite an imagination to find that this petition was sponsored by Hulphers.

Exception (24) On page 10, lines 29-32, the Examiner finds that:

“The uncontradicted testimony of numerous witnesses establishes and it is found that memberships in the Consolidated were solicited and dues were customarily collected during working hours on the respondent’s premises.”

This finding is very similar to the finding referred to in Exception 15 *supra*. As we pointed out in that exception, Hulphers was given his application during his noon hour; and to other Board witnesses, Yoakum and Freeman testified that they did not observe any solicitation for membership for Consolidated; and respondent is unable to find the “numerous witnesses” who established this solicitation which the Examiner finds. Furthermore, any collection of dues during working hours on respondent’s premises was done after Consolidated had been recognized as the bargaining agent. In this connection, respondent wishes to call attention to the recent Circuit Court decision, *N. L. R. B. vs. Electric Vacuum Company, Inc.*, (C. C. A. 6th June 6, 1941) in which it was held that after valid recognition of a union (A. F. of L.), the employer, after the C. I. O. started to horn in, could enter into a closed shop contract with the bargaining agent (A. F. of L.) and thereby keep out the C. I. O. entirely. This case directly supports the position of respondent that, once having validly recognized

Consolidated, it could support that recognition even though such support was detrimental to some other union that was trying to horn in.

Exception (25) On page 10, lines 33 and 34, the Examiner finds that:

“ . . . on occasion the Board of Directors of the Consolidated held meetings in the warehouse.”

This finding is untrue. The evidence shows that this occurred on ONE occasion and then without the knowledge or consent of the management.

Exception (26) On page 10, lines 38 and 39, the Examiner finds that:

“ . . . it is clear that the activities of the Consolidated in the plant were open and notorious and had the tacit consent of the respondent.”

and then in footnote 9, lines 59-62, he finds that:

“Contrary to the contention advanced in the respondent’s brief, there is no substantial evidence that organizational activities on behalf of the Union took place in the plant during working hours on a scale in any way comparable to those of the Consolidated described herein.”

In Exception 15 *supra*, we have already discussed this contention of the Examiner that solicitation for memberships of the Consolidated was made during working hours in the plant. There we have already shown that even the Board’s prize witnesses

were not aware of such solicitation, and also that there was no testimony that there was any such solicitation prior to the recognition by respondent of the Consolidated as the bargaining agent for its employees. Furthermore, a comparison of the testimony as to solicitation in the plant during working hours for union memberships in A. F. of L. and the Consolidated shows the incorrectness of these findings.

Testimony regarding such solicitation by Consolidated is as follows:

Hulphers—Solicited Loy in the summer of 1940. (Tr. 151)

Yoakum—At no time observed any such solicitation. (Tr. 242)

Freeman—never observed any such solicitation. (Tr. 280)

Frauenberger—Circulated petitions during vacation and contacted men outside the plant. (Tr. 304)

Testimony re such solicitation by A. F. of L. is as follows:

Sage—Several employees told him that the union organizers were downstairs and calling them together in little groups. (Tr. 17). (From the record, there can be no doubt but that the reference was to A. F. of L. organizers.)

Hulphers—A. F. of L. organizers had been down at the plant for a month prior to the meetings of the Consolidated employees. They

had been soliciting memberships during this time and memberships in A. F. of L. were often discussed during working hours. (Tr. 179-181). Talk among employees on the job regarding joining A. F. of L. (Tr. 232). Hulphers, himself, was soliciting memberships in A. F. of L. at that time and on company time. (Tr. 182).

Freeman—Saw two or three A. F. of L. organizers on the shipping floor of the warehouse during August and September, 1937. (Tr. 274).

The facts speak for themselves. The only pertinent comparison is during the period PRECEDING the establishment of the bargaining agent. Regarding that period, the A. F. of L. solicitation was clearly evident although there is no evidence of Consolidated solicitation.

Exception (27) On page 10, lines 41-42, the Examiner finds:

“Supervisory employees and management representatives have continued to play an active role in the Consolidated.”

This finding represents an accumulation upon the Examiner's previous erroneous findings as to the status of Frauenberger, Luck, Hook, Hatfield, and Nesbit (see Exception 16 *supra*) and is clearly unfounded. As to Turton, to whom the Examiner refers in this same paragraph, she was not a representative of the management, nor has the Ex-

aminer even made such a finding. The Examiner did without any basis whatsoever find that Fraunberger et al, together with Turton and others, in assisting in the organization of Consolidated, appeared to be and were acting on behalf of the management. (Report page 7, lines 48-51.) Even this Examiner would not venture to make any direct finding that Turton was a representative of the management, but rather attempted to set forth such a finding in this indirect way. This example is typical of this whole report. Here he finds that others together with Turton et al represented the management in the organization of Consolidated. He has made no finding whatsoever respecting Turton. Now he finds that the management continued to play an active role in Consolidated and as part of his basis sets forth the fact that Turton was its secretary until June 7, 1938. Such an approach does not indicate a fair and unbiased intermediate report. This report is certainly in harmony with this approach. On page 11, lines 5-6, the Examiner finds that:

“The respondent has consistently refused to enter into any written agreement with the Consolidated.”

Thusly phrased, this finding misstates the true facts. The true finding should be as stated by the testimony of Luck which is the basis for the finding. His testimony is:

“I believe pretty nearly without exception they were turned back and were not signed,

with the understanding that there was no necessity of having them signed, that the agreement was an understanding and would be followed through as readily—the verbal understanding as well as a written one.” (Tr. 441).

Exception (28) On page 11, lines 7-13, the Examiner referring to Consolidated finds:

“It has obtained minor concessions for the employees and the satisfactory disposition of grievances, when Meyberg was willing to cooperate, but has been wholly ineffectual when its proposals to have run counter to his wishes. In matters of substance such as increased vacation privileges to employees with more than 5 years of service, requested by them since 1938, the Consolidated has been content with presenting the requests of its members. Similarly, the two-year-old demand of the employees for wage increases was met, in October, 1940, only because of the threat that an outside union might be brought in.”

This finding, along with subsequent findings and conclusions of the Examiner, are certainly illustrations of twisted wishful thinking. This particular finding is somewhat inconsistent with the prior findings of the trial Examiner that:

“Early in October, 1937, the Consolidated prepared and submitted to Meyberg a list of 20 ‘Suggestions,’ concerning wages, hours and

working conditions. While many of these were statements of existing practices, several represented changes of substantial benefit to the employees . . . However, the respondent granted wage increases ranging from 5 to 18 per cent.” (Report page 7, lines 55-58, page 8, lines 3-4.)

In addition to the substantial benefits obtained in the fall of 1937, Consolidated obtained for the employees quite substantial wage increases on October, 1940. The finding of the Examiner that this 1940 wage increase was made:

“only because of the threat that an outside union might be brought in”

is not true. The wage increase was granted due to the activities of Consolidated, initiated by Hulphers’ suggestion at the August 20, 1940 meeting that the departments draw up petitions for wage increases to be signed by the employees, in circulating wage petitions and presenting them to the management. This is discussed at length in Exception 23 *supra*. Probably the real answer is that Consolidated became more active and determined after some of its members threatened to go to the A. F. of L. if something was not accomplished. (Board’s Exhibit 13-A.) (Tr. 200.) This is not unusual. The Examiner must be aware of many similar incidents when either the A. F. of L. or the C. I. O. is enthroned and the other starts to make inroads. But this should not be blamed on respondent.

Conclusions Regarding the Consolidated

Exception (29) On pages 11 and 12, the Examiner makes a number of conclusions regarding the Consolidated. Respondent excepts to all of these conclusions and without imposing an added burden upon the Board by quoting them at length, respondent will set forth his exceptions in the order of the findings.

(1) That Consolidated was created at the direct suggestion and as a result of intimidatory and coercive statements by Sage, a representative of the respondent, is false in every material respect. Sage did not make any intimidatory or coercive statements (see Exception 8 *supra*). Sage was not a representative of the respondent. (See Exception 2 *supra*.) Furthermore, Consolidated was not created at the direct suggestion of Sage. The employees requested Sage to call them together. After an impartial election, the employees themselves organized Consolidated with the assistance of Voorhees at a meeting which would not convene until Sage had left.

(2) That the organization was accomplished as a result of meetings and other activities conducted on respondent's premises during working hours with the assistance of certain enumerated employees designated by the Examiner as either supervisory employees or employees with interests identified with the respondent's interests is likewise wrong

in every material respect. The evidence clearly shows that these meetings leading to the organization of Consolidated were held after working hours. The circulation of the pre-organization petitions was done after hours. (See Exception 15 *supra*.) Possibly the Examiner had still other activities in mind but what they were no one could gather from the record. That the organization was accomplished with the assistance of Hill, Gates and Johnson certainly finds no support in fact. Hill and Gates were admittedly eliminated at the first real meeting of the employees. There certainly is nothing to support the contention that Johnson rendered any material assistance in its organization. As to Clark, while he was a member of the pre-organization committee, he took no active part in its organization so far as the record shows, and the only basis for this conclusion is a very lively imagination. As to Sage, he wasn't a supervisory employee nor were his interests identified with those of the respondent. (See Exception 2 *supra*.) As to Turton, the conclusion as to her position has already been discussed (Exception 27 *supra*.) As to the others, the gross error of this conclusion is shown by Exception 16.

(3) In anticipation and recognizing the inaccuracy of his previous finding, the Examiner states that the fact that Consolidated ridded itself of Sage, Hill and Gates and other supervisors having the right to hire and discharge in no way absolves

the respondent of the responsibility for the activities of its representative in the organization of Consolidated. As a finding of fact, this is immaterial because there is no evidence that anyone having the power to hire and fire ever took any part in the organization of Consolidated. As a conclusion of law, it is wrong when one considers that Hill and Gates were out of the picture before the employees ever decided to hold an election and that Sage took no part in the election and was out of the picture before any further steps were taken in its organization.

(4) The Examiner finds that the record gives no basis for assuming that Consolidated would have been formed without the "interference" of Sage, but rather that it gives a basis for the contrary assumption. In the first place, such a conclusion is of no consequence, because as we have shown Sage's activities in the organization of Consolidated do not in any way support the charges that are here being made against respondent.

The Characterization of Sage's activities as "interference" is based upon the Examiner's entire erroneous biased belief as evidenced throughout this report that this union is a company-dominated union. Secondly, the evidence shows that the employees themselves wanted to organize; that they chose an independent union by a secret ballot election, the fairness of which is not questioned in the entire record; that they organized through em-

ployees whom they subsequently chose as their leaders; and that when Sage discontinued his activities in connection with the organization of the employees, Fraunberger, a man of high caliber who had been with respondent 14 years, took the initiative in getting the ball rolling. Contrary to this finding of the Examiner, these facts pretty clearly indicate that there was ample leadership among the employees, other than Sage, for the organization of an independent union.

(5) The Examiner finds that Consolidated's policy of excluding employees with the right to hire and fire cannot be accepted as showing freedom from company domination in the face of continued membership and activity of supervisory employees and of others whose interests are identified with those of the respondent. In the first place, the Examiner takes the position that the union is presumed to be company-dominated and that the burden is upon respondent to disprove this presumption. While his statement might be convincing to him, it certainly would not be convincing to anyone with an unbiased mind. Secondly, his statement that there was continued membership and activity of supervisory employees is false and has been adequately dealt with already. His reference to the activity "of others" whose interests are identified with those of the respondent is nothing but an attempt to infer that, aside from those specifically mentioned in the report whom we have already shown do not have interests identified with those

of the management, there were others with interests identified with the management who took an active part in the organization of Consolidated. If there were these others, why didn't the Examiner say who they were and make specific findings as to their duties and their relationships with the respondent? The absence of such findings shows the unfairness of his position.

(6) The finding, that the election in September of 1937 followed the so-called interference and coercion practiced by Sage and constituted a further interference by respondent and cannot be taken as reflecting a free choice of the employees, is in all material respects false. There was not interference and coercion of any kind practiced by Sage (see Exception 8 *supra*). Furthermore, the election was not held as a result of any of the activities of Sage but was held because the employees themselves determined that the only proper way to ascertain what they, as a group, wanted was to hold an election. At this election, they had a ballot which had a preferential position for the C. I. O. and which had a tortiary position for the independent union. There is no evidence—and could be none—that there was any coercion or unfairness of any kind regarding the voting by the employees. In fact no such contention was advanced at the trial even by the A. F. of L. boys. The Examiner really went out on a “limb” here. The ballots were counted by a group whose status as employee representatives is established by the subsequent election

of most of this group to offices in Consolidated by the employees themselves in their general meeting. In the light of these facts, the conclusion that this election did not reflect the free choice of the employees is absolutely and unwarrantedly biased and false.

(7) The respondent refers to a number of findings, most of which are false in their material aspects, as a basis for his conclusion that the subsequent history of Consolidated shows further evidence of domination by the respondent. Of course, these activities subsequent to the recognition by respondent of Consolidated as the bargaining agent can be of absolutely no significance regarding the charge here which is primarily one of company interference in the formation of this union. Furthermore, his finding that supervisory employees and other management representatives continued their membership and activity is erroneous. As we have shown before, the individuals to whom the Examiner is here referring were neither supervisory employees nor management representatives. The finding that respondent violated the act by its so-called contributions tops all of the ridiculous findings which this Examiner has made in this report. The purpose of the act is to promote the best harmony and feeling of mutual responsibility between employers and employees. If these acts of respondent in furnishing ice cream for a picnic which both union and nonunion representatives at-

tended (Meyberg, Tr. 568) and in allowing the use of a company truck and furnishing cigarettes as prizes to the winning ball team at another picnic which both union and nonunion representatives (Gates, Tr. 74 and Meyberg, Tr. 568) attended constitute a violation of Section 8 (2), then every employer of any substantial size whom respondent knows is guilty of an unfair labor practice, whether the union be C. I. O., A. F. of L. or independent.

The Examiner finds that Consolidated GRANTED the use of respondent's premises for at least one social function. This is not supported by the record. The record does show that Consolidated used the warehouse for one dance, after recognition, but by the testimony of Mr. Meyberg, this use was not contributed gratis by the company (see Exception 19, *supra*).

(8) The Examiner makes numerous references to the alleged difficulties of Consolidated in obtaining the support of the employees by so-called "various devices" such as serving of refreshments and bank nights. One would think that the Examiner was not familiar with the practice of HIS "legitimate" unions of levying fines for not attending meetings or otherwise coercing their members into attending meetings. An unbiased Examiner would have concluded that a company-dominated union WOULD NOT encourage participation BY THE MEMBERS.

(9) The Examiner finds that the record is replete with evidence showing the need for a written agreement. However, he is very careful not to

point out any of this evidence. As we have shown *supra* (Exception 27) the leaders of the union did not demand a written agreement as they placed the company's oral agreement on the same footing as a written agreement.

(10) In October, 1937, respondent recognized Consolidated as the bargaining agent for its employees. Thereafter and through the activities of Consolidated (see Exception 23 *supra*) respondent in 1940 granted its employees substantial wage increases. Again the Examiner finds that "these wage increases were granted to prevent union organization," implying that there was not already a union organization existing, and "that in insisting that they be granted through Consolidated, the respondent gave substantial support to Consolidated." This finding is pretty well taken care of by Exception 23 *supra*. It is rather difficult to see how respondent in carrying out a bona fide contract whereby it had recognized Consolidated as the bargaining agent for its employees was improperly giving substantial support to that organization (see *N. L. R. B. v. Electric Vacuum Company, Inc.*, Exception 24, *supra*).

(11) The Examiner refers to the evidence concerning Hook's dues delinquency as showing the "affinity" between respondent and Consolidated. If Hook were such a representative of the management, why would he be receiving such a letter from Consolidated. This is just another example of how the Examiner's story doesn't hang together.

(12) The Examiner finds that respondent dominated and interfered with the formation and administration of Consolidated and contributed support to it, and by the October, 1940 wage increases, and by the alleged statements attributed by Thrift to Hill, interfered with the employees in the exercise of their rights under Section 7 of the act. If there was ever a finding which was a patent admission of flimsiness of a charge alleging a violation of Section 8 (1), this is it. These findings have been referred to specifically and will not be reiterated here. However, respondent wishes to point out that the entire case of the Board rests upon a fundamental premise that respondent dominated the formation of Consolidated. This in turn rests upon the classification by the Examiner of certain employees as supervisory employees. As we have shown, this classification by the Examiner of these employees is absolutely an outrage, and when their status as nonsupervisory employees is recognized, the alleged domination in the formation of the union falls flat and together with it tumbles the alleged interference in the administration of Consolidated.

Hook, the so-called "supervisory employee," was the one who in the fall of 1940 circulated the wage petition asking for the largest wage increase. This petition was signed by so-called "supervisory employees" Nesbit and Hatfield. Meyberg's secretary was nonunion and Consolidated objected to "leaks" to other unions and requested Meyberg

to dictate all his future letters to Consolidated to a secretary who was a member of Consolidated. Loy personally went to Meyberg and got a raise. Consolidated had considerable difficulty with respondent in getting satisfactory results in its attempt to get preferential hiring and this difficulty led to the submission by Consolidated to respondent of a request for a closed shop. Aren't these facts a bit inconsistent with the position of the Examiner that Consolidated was company dominated. Respondent cites these instances, a few of many disclosed by the record, merely to show how the Examiner's story doesn't hold together.

Exception (30) Respondent excepts generally to the finding of the Examiner on page 12, lines 27-32 that the activities of respondent have a close, intimate and substantial relation to Interstate Commerce and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. In this connection, respondent feels that the record proves the exact opposite.

In conclusion, respondent wishes to point out that the entire case of the Board's rests fundamentally upon the classification of certain employees, Frauenberger, Hatfield, Nesbit, Hook and Luck as supervisory employees. Respondent has shown and the record demonstrates that there is no conceivable ground upon which these employees could be classified as supervisory employees. From the standpoint of respondent, it is grossly unfair

to attach to respondent the stigma which is attached by these proceedings, especially when respondent has bent over backwards to keep its hands out of the organization or administration of any bargaining agent the employees might select. Furthermore, from the standpoint of the employees, once Consolidated was properly recognized by respondent as the bargaining agent for its employees, any deficiency in Consolidated's power as a bargaining agent is a matter which should be left to the members themselves and is not a proper matter for any action by the Board.

Respondent wishes to call attention of the Board to the fact that the name "Frauenberger" is misspelled in some places in these Exceptions. Whenever the name "Fraunberger" is used, it is meant to apply to Mr. Frauenberger, there being only one Mr. Frauenberger involved in these proceedings. We regret that the pressure of time has not permitted us to correct this typographical error.

Dated: July 30, 1941.

Respectfully submitted,

LATHAM & WATKINS,

By PAUL R. WATKINS,

RONALD C. ROESCHLAUB,

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Germain Seed and Plant

Company,

1112 Title Guarantee Building,

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Los Angeles, California.

United States of America
Before the National Labor Relations Board
Case No. C-1913

In the Matter of

GERMAIN SEED AND PLANT COMPANY

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF AMERICA,
LOCAL NO. 595, AFL.

Mr. James A. Cobey, for the Board.

Latham & Watkins, by Mr. Paul R. Watkins, of
Los Angeles, Calif., for the respondent.

Mr. Ralph Woolpert, of Burbank, Calif., for the
Union .

Mr. Marvin C. Wahl, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon an amended charge duly filed on February 28, 1941, by International Brotherhood of Teamsters, Chauffeurs. Warehousemen & Helpers of America, Local No. 595, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, Cali-

fornia), issued its complaint dated April 5, 1941, against Germain Seed and Plant Company,¹ Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent, the Union, and Consolidated Seedsmen's Union, Inc., herein called the Consolidated.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) by various specified acts on the part of its officers and agents dominated and interfered with the formation and administration of the Consolidated, and contributed support and assistance to it; and that (2) by the foregoing acts, by announcing and placing into effect a general wage increase in September or October 1940, by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union, and by uttering remarks disparaging to the Union, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(1) The designation of the respondent in the caption of the case was corrected at the hearing to read as above stated.

On April 19, 1941, the respondent filed with the Regional Director a motion to dismiss the complaint on the grounds that it was not engaged in commerce within the meaning of the Act and that the charge upon which the complaint was issued did not conform to the Rules and Regulations of the Board. It also filed a motion for a bill of particulars and a motion to strike various portions of the complaint on the ground that they were "conclusions," "generalities," and "unintelligible." On April 23, 1941, the respondent filed its answer, in which it admitted certain allegations of the complaint pertaining to its business but denied that it had engaged in the unfair labor practices alleged in the complaint or that such alleged acts affected commerce within the meaning of the Act.

Pursuant to notice, a hearing was held at Los Angeles, California, from April 24 to 28, 1941, before James C. Paradise, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented and participated in the hearing. The Consolidated did not appear. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the beginning of the hearing, the portion of the respondent's motion to dismiss the complaint predicated upon the alleged invalidity of the charge was denied by the Trial Examiner. At the same time, decision was reserved on that portion of the

motion based upon the claim that the respondent was not engaged in commerce within the meaning of the Act. The Trial Examiner denied the motion in his Intermediate Report. The motions for a bill of particulars and to strike certain allegations of the complaint were also denied by the Trial Examiner, except that counsel for the Board was directed to particularize the allegation that the respondent had interfered with, restrained, and coerced its employees "by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union." Thereafter, this allegation was stricken by consent of the parties. During the course of the hearing, the Trial Examiner ruled on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On June 13, 1941, pursuant to a request made by the Trial Examiner, the parties entered into an additional stipulation concerning the business of the respondent. In accordance with its terms, the stipulation was made a part of the record as Trial Examiner's Exhibit No. 1.

The Trial Examiner thereafter filed his Intermediate Report, dated June 17, 1941, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices within the mean-

ing of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, and recommended that it cease and desist therefrom and withdraw recognition from and disestablish the Consolidated. Thereafter the respondent filed exceptions to the Intermediate Report. The Board has considered these exceptions to the Intermediate Report and insofar as they are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent.

Germain Seed and Plant Company is a California corporation having its principal office and place of business at Los Angeles, California. It is engaged in the growing, refining, purchasing, and selling of seeds, bulbs, plants, and nursery stock, and in the purchase and sale of insecticides, poultry, and garden supplies and remedies, hardware, and other similar products.

The respondent operates a wholesale and warehouse department in Los Angeles, where it is engaged in selling both at wholesale and retail. It also has retail stores in Los Angeles, Salinas, and Santa Maria, California; a retail store and nursery in Van Nuys, California; a warehouse and wholesale and retail store in San Francisco, Cali-

fornia; a warehouse in Fresno, California; and a bulb farm at Camarillo, California. During 1940, the respondent purchased various products valued at approximately \$900,000. About 17 per cent of these products, valued at about \$150,000, originated at points outside the State of California. During the same year, the respondent sold products valued at approximately \$1,500,000. About 24 per cent of such products, valued at about \$360,000, were shipped to points outside the State of California.

This proceeding concerns only the warehouse and retail store in Los Angeles and the retail store and Nursery in Van Nuys. In 1940, the respondent's purchases for this warehouse amounted to \$719,860, of which 40 per cent was shipped to the warehouse from points outside the State of California. During the same period, the products sold from the warehouse were valued at \$873,968; 25 per cent of these products were shipped to points outside the State of California. Approximately 90 per cent of the business of the Van Nuys retail store and nursery is handled through the warehouse, from which merchandise is shipped directly to customers of the Van Nuys establishment. Purchases made for the Los Angeles retail store in 1940 amounted to \$88,739, of which about 5 per cent was shipped to this store from points outside the State of California. The products sold by the retail store during the same period were valued at \$158,393.50; about 2 per cent of these products were shipped from

this store to points outside the State of California.²

On October 31, 1940, the respondent employed 176 workers, of whom 146 were employed at the Los Angeles and Van Nuys establishments.

II. The organizations involved.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

Consolidated Seedsmen's Union, Inc., is an unaffiliated labor organization, admitting to membership employees of the respondent.

III. The unfair labor practices.

A. Supervisory employees.

The employees of the respondent discussed below played a large part in the formation and administration of the Consolidated. As noted previously, the complaint alleges that the Consolidated was organized, dominated, and supported by the respondent. The respondent contends that it was not responsible for the activities of these employees in view of the positions which they occupied in the plant.

(2) The record does not disclose whether merchandise is shipped to this store from the warehouse or whether any of the sales made at this store are shipped from the warehouse.

Walter P. Sage had been in the employ of the respondent for 22 years. He was in charge of the shipping department for several years, then served as superintendent of the warehouse and order-filling department for about 12 years, and became purchasing agent in about 1933. As purchasing agent, Sage was in charge of the purchase of insecticides, spray pumps, and miscellaneous items. Manfred Meyberg, president of the respondent, testified that Sage was included among the small group of employees designated as "department managers," who met regularly at the plant every Saturday morning to discuss means of bettering the respondent's service. Present at these meetings were Meyberg, W. J. Schoenfeld, vice-president of the respondent, Marks, the sales manager, Dwight Gates, the manager of the warehouse and mill room, Woolecott Hill, the manager of the shipping department, and Pieters, the supervisor of the third floor of the warehouse.

Harold Frauenberger had been employed by the respondent for 14 years. He held the position of city shipping clerk in the warehouse; Hill was his immediate superior. Although Frauenberger had no authority to hire, discharge, or discipline employees, he was charged with the duty of relaying Hill's orders to the truck drivers, assigning and directing work, helping load the trucks, checking out the loads, and attending to complaints concerning deliveries.

Vivian Nesbit, who had been in the respondent's employ for 17 years, was an order filler on the

fourth floor of the warehouse, his superior being either Hill or Gates, whose offices were on the first and fifth floors, respectively. The number of employees on the fourth floor ranged from two to five depending on the season. Nesbit denied that he was in charge of this floor, but explained that "my idea of being in charge is being in charge . . . so as to hire and fire." Roy Yoakum, Charles Loy, and Eric Hulphers, employees of the respondent, testified, and we find, as did the Trial Examiner, that Nesbit was in charge of and directed the work of the other employees on the fourth floor.

Kenneth Luck testified, and we find, that he was head of the bulb department on the third floor of the warehouse. While at times during the off-season, he had been the sole employee in that department, there were three or four other employees under him during the busy season, which normally covered approximately 7½ months during the year. He supervised and inspected their work, prepared the invoices, and purchased merchandise for resale. Concerning his authority to recommend hiring or discharging, he testified:

Well, I could certainly recommend it, whether I was in any position or not. I mean, as to having the ability to, why, in my department at times it was very busy and we did have more people, and when some of them possibly weren't getting the job done, I would go to Mr. Pieters,

who was in charge of that department as to hiring and firing, and tell him I would like to have somebody either replaced or put on some other job . . . I would possibly like recommend.

We find that Luck had authority to recommend persons for hire and discharge.

Allen Hook had been employed by the respondent for 18 years and operated the mills on the sixth floor of the warehouse where seeds were cleaned. During the busy season, about 12 additional employees worked in this department. Hook testified, and we find, that his duties required him to relay the orders of Gates to these employees as well as to the "bull gang," to assign work, be responsible for its proper performance, and to guide and instruct the men. He testified that "If they don't do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do."

Daniel Hatfield had been employed by the respondent for 22 years and filled seed orders on the fifth and sixth floors of the warehouse. When the work required, he had one or more helpers. When he needed additional help, he asked Gates for it, but if the need was urgent, he testified, "I just grab anybody that is there," usually from the "bull gang." He directed and supervised the work of his helper or helpers and was responsible for the proper filling of seed orders.

One of the early demands which the Consolidated made was for "A better allotment and statement

concerning sub-foremen and their position.”³ It is evident from the record that Frauenberger, Nesbit, Luck, Hatfield, and Hook were the only employees of the respondent who could be characterized as subforemen. Hook testified that this demand affected himself, Nesbit, and Hatfield, and that they believed that they should get more pay than the ordinary employees “for being a little more responsible for the type of work we was doing.” Moreover, at the time of the hearing, Frauenberger, Nesbit, Hook, and Hatfield received \$115 per month as wages from the respondent. Luck received \$120 per month. It appears that none of the respondent’s production and maintenance employees who testified received more than \$100 per month from the respondent.

W. S. Clark was in charge of the Van Nuys nursery. He was included in a group of management representatives invited by the Consolidated to attend a dinner meeting on May 2, 1939, in order to promote a “closer relationship” between the Consolidated and the management.

Upon the basis of the entire record, we find that Sage was an executive of the respondent and represented the respondent in the activities described below, that Frauenberger, Nesbit, Hook, Luck, and

(3) On December 22, 1937, the Consolidated issued a notice to its members setting forth “agreements obtained” from the respondent. One of the items claimed to have been agreed to was “A better allotment and statement concerning sub-foremen and their positions.”

Hatfield were working foremen with supervisory authority whose interests were closely identified with those of the management, and that Clark was a supervisory employee. We also find that the employees of the respondent had just cause to believe that the foregoing supervisors and officials were acting for and on behalf of the respondent,⁴ and that the respondent is responsible for the activities of these employees, as described below, in connection with the organization and administration of the Consolidated.⁵ The respondent concedes, and we find, that Gates, the manager of the warehouse and mill room, and Hill, the manager of the shipping department, were supervisory employees with authority to hire and discharge.

1. The organization of the Consolidated

Commencing about August 1937, efforts were made by representatives of the American Federation of Labor to organize the Los Angeles employees of the respondent. There was much discussion of the question of union organization among the employees. The activities of the union organizers were

(4) *International Association of Machinists; Tool and Die Makers, Lodge No. 35, etc. v. N. L. R. B.*, 311 U. S. 72; *N. L. R. B. v. Link-Belt Company*, 311 U. S. 584.

(5) *H. J. Heinz Company v. N. L. R. B.*, 311 U. S. 514; *Swift & Co. v. N. L. R. B.*, 106 F. (2d) 87 (C. C. A. 10).

brought to the attention of Sage, the respondent's purchasing agent. Sage testified that some of the employees discussed with him the desirability of organizing a union of some kind; the only ones whose names he could recall were Nesbit and Hatfield. Sage testified, further, and we find, that as a result of these discussions, he decided to call a meeting of the employees and that he "just sent word around the building and asked them if they would care to enter into a meeting with me after work, Saturday afternoon, and talk the thing over, and they said they would." As a result, a meeting of 15 or 20 employees was held on the shipping floor of the Los Angeles warehouse after working hours on a Saturday in August 1937. Among those present at the meeting were Hill, Gates, Hatfield, Nesbit, Hook, and Luck.⁶

Sage presided at the meeting and was the only speaker. He testified, and we find, as did the Trial Examiner, that he stated to the employees:

"Several of you boys have come to me and told me that there were different union organizers coming into the plant talking to groups, and that you had expressed to me a desire to have a union of some kind," and I made the suggestion that, "Perhaps you would like to have a little independent union of your own."

* * * * *

(6) All these employees are found in Section III A, *supra*, to be representatives of the management.

They said that they wanted to form the union, and I said, "Well, I think then you should have a legal man to do that for you." And they asked me if I knew of anyone, and I told them I did . . .

Sage then offered "to get a man for them if they wanted one," and suggested the name of J. P. Voorhees. Prior to this meeting, Sage explained at the hearing he had heard that an "independent" union was functioning at the local plant of the Cudahy Packing Company and had conferred with one David Stratton, the secretary and business agent of that union, in order to obtain more information about it. Stratton, Sage testified, had given him the name of Voorhees as an attorney who was familiar with the organization of "independent" unions.

In addition, Hulphers, Yoakum, and Alfred Freeman, all employees of the respondent, testified that at this meeting Sage made statements to the following effect: That they were all one happy family and wanted to be sure that what they did was right; that they should not do anything which might endanger their jobs; that the respondent would prefer a "house" union to an "outside" union; and that President Meyberg and Vice-President Schoenfeld had plenty of money and could close the plant down at any time. Of the foregoing statements, Sage denied only having said that Meyberg and Schoenfeld had plenty of money and could close the plant down at any time. The Trial Examiner found, and

we find, that Sage made the statements attributed to him.

About 2 weeks later Sage again held a meeting of employees at the same place on a Saturday afternoon after working hours. Voorhees, whom Sage had requested to attend, and Stratton were present. Sage introduced Voorhees as a lawyer experienced in the organization of "independent" unions. Voorhees told the employees that they could form any union they pleased, explained the alleged advantages of "independent" unions over "outside" unions, and advised them to incorporate. He also stated that employees having the right to hire, discharge, or discipline or occupying executive positions could not belong to a union. Hill then inquired about his right to be present and was told that both he and Gates should leave. They departed but Sage, Nesbit, Hatfield, Hook, and Luck remained. Voorhees then introduced Stratton, who spoke briefly about the success of the "independent" union at the Cudahy plant.

It was also suggested at this meeting that an election should be held to determine the wishes of the employees before an "independent" union was formed. Two or three days later an election was held in the plant during working hours. Printed ballots, the source and authorship of which are not established by the record, were distributed to the employees during working hours. Richard Kadous, an employee of the respondent, testified that Frau-

enberger, who has been found herein to be a supervisory employee, undertook to arrange the details of the election. Hulphers testified that Frauenberger handed him his ballot and that a ballot box for the traffic department was kept on Frauenberger's desk. Frauenberger denied that he had anything to do with the "arrangement" of the election. He did not deny, however, that he had handed Hulphers a ballot or that a ballot box was kept on his desk. We find that Frauenberger arranged the details of the election and actively participated in the election. Other ballot boxes were placed in the various departments of the warehouse, the Hill Street store, and the Van Nuys branch. The employees voted at such times as they found convenient and the ballots were counted and tabulated on the shipping floor.⁷

The ballots gave the employees a choice of the C.I.O., the A.F. of L., an "independent" union, or "Have Mr. Meyberg talk to us." Of 102 ballots cast, 45 were for an "ndependent" union, 33 for the A.F. of L., 11 for a talk by Meyberg, 3 for the C.I.O., and 10 were spoiled. Although less than a majority had voted for an "independent" union,

(7) None of the witnesses was able definitely to state how the persons who counted the ballots were chosen, although there is some evidence that Frauenberger appointed them. Among those in the group were W. S. Clark and Vivian Nesbit, both of whom have been found above to be supervisory employees.

the sponsors of Consolidated nevertheless proceeded with their organizational activities.

A pre-organizational committee was then created, composed of employees from the various departments. None of the witnesses, including members of the committee, was able to explain how the committee was chosen. The committee included Clark, Frauenberger, Luck, Hook, and Dorothy Turton, private secretary to Vice-President Schoenfeld.⁸ The members of the pre-organizational committee circulated petitions designating themselves as "a committee to formulate an independent union" and to represent the employees for the purposes of collective bargaining; they also collected initiation fees. These activities were carried on in the warehouse during working hours about September 1, 1937. Among the signers of the petitions were Turton, Sage, Clark, O. E. Johnson, assistant manager of the Hill Street retail store, A. Stanley Williams, assistant to Earl E. Sidebottom, secretary-treasurer of the respondent,⁹ Nesbit, Hatfield, Hook, Frauen-

(8) As private secretary of the respondent's vice president, Turton, we find, occupied a confidential position which allied her closely with the respondent, and gave employees just cause to believe that she represented the management. Cf. *Matter of Central Greyhound Lines, Inc., of New York and Brotherhood of Railroad Trainmen, etc.*, 27 N. L. R. B., No. 163.

(9) We find that Johnson and Williams are representatives of the management.

berger, and Luck.

On September 9, 1937, Articles of Incorporation of the Consolidated, prepared by Voorhees, were executed. Included among the seven incorporators, who also became the first Board of Directors, were Frauenberger, Turton, Hook, Luck, and Clark.¹⁰ After the Consolidated was incorporated and the by-laws drafted, another meeting of the employees was held in the respondent's Hill Street store. Voorhees testified, and we find, that at this meeting several employees questioned whether Sage had the right to belong to the Consolidated in view of his supervisory or executive position. Voorhees then stated that "since they felt he was in that position . . . that he had no right in the meeting whatsoever" and asked Sage to leave. There is no evidence that Sage had any connection with the Consolidated after this occurrence.

Meyberg testified, and we find, that after one of these meetings, the respondent distributed a signed statement to its employees as they left the premises. The statement reads as follows:

A STATEMENT OF FACTS

Because of many stories and rumors that are being circulated and believing that those with whom we have worked side by side have confidence in their employers and will welcome

(10) Clark and Hook resigned as directors on September 20, 1937.

comment from time to time on matters of vital interest to our business and our jobs, we wish to say that:

This business believes in the American right of every man and woman to work without coercion, or intimidation of any sort. In support of this principle we believe in the open shop and, in justice to all, we are opposed to any form of closed shop agreement.

You do not have to join any labor union or organization in order to hold your jobs. The law does not require it. This business does not require it.

You do not have to pay dues, levies, nor any kind of tribute to any organizer or group to hold your job.

You do not have to belong to any organization to get wage increases or enjoy shorter hours. Whenever these benefits are possible they are made to those who do not belong to any organization just the same as to those who do.

You do not have to be a member of any organization. Likewise, you are at liberty to join any lawful organization.

This business takes pride in the high type of its personnel and the friends they have made of thousands of customers.

It is a pleasant relationship that should be continued for the best interests both of em-

ployes, and of customers, who after all are our real employers, whether our job happens to be selling, marketing or delivering merchandise, or planning and managing the many activities involved in modern business.

We have steady employment. Our operations are all carried on in a spirit of friendly acquaintanceship, in close contact with each other and with the public.

There are no inaccessible "bosses". Everyone knows everyone else. We like to feel that we work with, not against, each other. We want to meet each day in that spirit.

GERMAIN SEED & PLANT CO.
MANFRED MEYBERG,
President.

On September 28, 1937, the Consolidated informed the respondent that it represented a majority of the employees and submitted the preorganization petitions and membership applications in support of its claim. This evidence was checked by the respondent which, on October 1, recognized the Consolidated as exclusive representative of its employees at the Los Angeles and Van Nuys establishments.

2. Subsequent history of the Consolidated.

Although Sage withdrew from the Consolidated after it was incorporated, various supervisory employees and representatives of management con-

tinued to play an active role in the Consolidated. Frauenberger was its president from September 1937 to April 5, 1938, Luck from April 1938 to April 1939, and Hook occupied that office at the time of the hearing. Turton was secretary until she left the respondent's employ on June 7, 1938, and Violet Ashley, who succeeded Turton as Vice-President Schoenfeld's private secretary, was secretary of the Consolidated from August 1938 to November 1938. The directors since the beginning of 1938 have included, at various times, Luck, Hook, Hatfield, Nesbit, and Frauenberger.¹¹

Early in October 1937, the Consolidated prepared and submitted to Meyberg a list of 20 "Suggestions," concerning wages, hours, and working conditions. While many of these were statements of existing practices, several represented changes of substantial benefit to the employees. The respondent approved all but four of these suggestions; those rejected included changes in the length of the work week, 2 weeks vacation with pay, and restoration of the 1929 wage scale. However, the respondent granted wage increases ranging from 5 to 18 per cent. The Consolidated did not then ask the respondent to enter into a written contract covering those matters upon which the parties had agreed. On October 14, 1937, however, the Consolidated in-

(11) Employees having the power to hire and discharge have been refused membership in the Consolidated.

formed the respondent that its members had authorized its Board of Directors "to proceed with making definite agreement . . . as per the suggestions already presented . . ." It does not appear that anything further was done toward obtaining "definite agreements" in accordance with the approved suggestions.¹²

Despite the increases granted by the respondent in October 1937, there was considerable dissatisfaction among the employees with the wage scale. On February 1, 1938, a petition was presented to the Consolidated on behalf of a group of employees by their representative, Hook, calling for, among other things, \$100 per month as a minimum wage for common labor. The Board of Directors of the Consolidated voted to take no action on this request and nothing further was done about it until August 20, 1940. At that time Hulphers, an employee of the respondent and member of the Consolidated, again demanded action on this request. The minutes of a meeting held on that day state: "The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another Union." At the same meeting of the Consolidated, a motion was

(12) The minutes of a meeting of the Consolidated held on August 20, 1940, show that one of the employees proposed that the Consolidated obtain a signed agreement, to which the president replied that this could not be done.

carried requiring the president to "go to the Labor Council and find out the wage scale and find out what departments would be taken care of by the other Unions."

Thereafter, as appears from the uncontradicted testimony of Loy, an employee of the respondent, which we credit, as did the Trial Examiner, the members of the Consolidated were informed by their representatives that "it was absolutely impossible to get a raise." As a consequence, in the first week of September 1940, a number of employees, including Hulphers, Loy, and R. H. Montgomery, went to the offices of the Union where several of them signed applications for membership in the Union. The following morning Hulphers, Loy, and Montgomery went to see Meyberg. They told him that they had not been able to obtain satisfaction through the Consolidated, that there was unrest among the employees, and that they wanted to consult him before going any further. Meyberg stated that he wished to speak to all of the employees and asked that, in the meantime, the men prepare a petition embodying their demands. That evening, after working hours, practically all of the men in the warehouse and some of the women gathered in Meyberg's office. John Butterfield, who became president of the Consolidated shortly thereafter, presented two petitions to Meyberg, one which had been sponsored by the group led by Hulphers calling for a substantial wage increase, and one which had

been sponsored by Butterfield himself calling for a smaller increase. Neither of these had been authorized by the Consolidated. Hulphers reiterated the substance of what had been told Meyberg that morning. There was some discussion of the possibility of the employees joining an outside union. Meyberg then stated that he would like to discuss the problem with the men only and suggested that he take them to dinner at a later date, at which time the matter could be further discussed.

That this move for wage increases was supported by members and non-members of the Consolidated, wholly apart from the Consolidated, is established not only by the testimony of Loy and Hulphers, but also by the following statement contained in the minutes of a meeting of the Consolidated on September 13, 1940:

Union [i.e., Consolidated] and non-Union members went in to Manfred Meyberg to ask for more money. He is to have a meeting with the men September 17th.

On September 17, Meyberg met with the men at the plant after having taken them to dinner. There were both members and non-members of the Consolidated present. We find, as did the Trial Examiner, on the basis of Hulphers' undenied testimony, that Meyberg addressed the employees, stating that he had heard of unrest among them, and that "We are all here together, so we want to try to work all these things out among ourselves. We

are one happy family . . .” He stated further that the Consolidated had not presented any demands for wage increases, but then said that whatever he would do would be handled through the Consolidated. He added that any wage increases granted would be retroactive to September 15, 1940. Finally, he said, according to the undenied testimony of Hulphers and Loy, which the Trial Examiner credited and which we credit, “Give me a chance to do something. Being you come (sic) up here for the chance, before you do anything, before you call the doctor in, maybe it is not the right ailment. Maybe you have got the wrong ailment. Maybe you won’t need the doctor.” It is clear from the testimony of these witnesses, and we find, that by the “doctor” Meyberg meant the Union. On October 3, 1940, Meyberg granted substantial wage increases of which the employees were apprised through notices sent by Meyberg to the Consolidated. On October 8, 1940, Meyberg met with the Directors of the Consolidated to learn whether the various divisions were satisfied with the wage increases. The minutes of this meeting reveal that, with regard to some employees who were dissatisfied, namely, Wilford, Casey, Bushing, and Cook, their grievances were disposed of by having Meyberg talk to them.

On several occasions the Consolidated furnished Meyberg with lists of employees not in good standing with the Consolidated. Although Meyberg denied having requested lists of delinquent members,

he admitted that he received such lists and stated that he used his own judgment in acting on them. The Consolidated informed delinquent members by letter that their names were being included on a list of "non-union members" which "goes to Mr. Meyberg each month" and that "any future layoffs are to be chosen" from that list. On or about May 23, 1939, Hook received such a letter from the Consolidated. We credit, as did the Trial Examiner, Hook's undenied testimony that he went to Meyberg and asked whether the Consolidated had a closed-shop agreement and whether he would be laid off if he did not pay his dues. To both these questions Meyberg replied in the negative and then stated that "to keep harmony in the firm, it is better to join the union, the fifty cents a month doesn't break you . . . it is best to join, to keep paying your dues." Hook paid his dues and remained active in the Consolidated.

Jack Thrift testified that on October 10, 1940, he was asked by Hill, his foreman, whether he belonged to the Union; that when Thrift answered in the affirmative, Hill stated:

Well, that makes it sort of bad, Jack, because I intended to keep you on here. Now I don't know what to do about it . . . to my notion, the A.F. of L. and the C.I.O., all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C.S.U. [Consolidated] as well, they are taking care of you

here, whereas the dues you are paying into the A.F. of L. is doing you no good. We don't want the A.F. of L. in here or any other union.

Hill then asked him whether he could secure a withdrawal card and Thrift replied that he preferred to remain a union member. Hill was not called as a witness. The Trial Examiner found, and we find, that Hill made the statements attributed to him by Thrift.

On May 19, 1938, the Consolidated invited Meyberg and other representatives of the respondent to attend a picnic to be held on May 22, and asked Meyberg for the use of a company truck and for "any financial consideration that the firm would deem feasible." Meyberg granted the Consolidated the use of a truck, contributed \$10 toward the picnic, and paid a fine incurred by the driver of the truck. On July 30, 1938, the Consolidated held a "Weenie Roast" and the respondent again lent its truck. On September 7, 1938, the Consolidated wrote to Meyberg expressing thanks for "the help and cooperation you and the Germain Seed & Plant Company extended . . ." It also appears that Meyberg gave the Consolidated the use of the shipping floor in the warehouse for a dance held in October 1938.

In addition, the uncontradicted testimony of numerous witnesses establishes, and we find, that the Consolidated solicited members and customarily collected dues during working hours on the re-

spondent's premises; that notices of meetings were regularly posted over the time clocks in the various divisions; that the secretary of the Consolidated frequently advised the Board of Directors of meetings by use of the respondent's telephone during working hours; and that, on occasion, the Board of Directors of the Consolidated held meetings in the warehouse. Although the record establishes that the permission of the respondent was neither sought nor specifically given for these practices, and although on one occasion in the summer of 1940 Gates told Hook not to collect dues during working hours, it is clear, and we find, that the activities of the Consolidated in the plant were open and notorious and had the tacit consent of the respondent.¹³

3. Conclusions.

The Consolidated was formed immediately after the American Federation of Labor began to organize the respondent's employees in August 1937. It was brought into being by Sage and various other supervisors and representatives of the respondent. Sage called the initial meeting, which was held in the plant, to discuss the formation of an "independent" union; he admitted that he told those present

(13) Contrary to the contention advanced by the respondent, there is no substantial evidence that organizational activities on behalf of the Union took place in the plant during working hours on a scale in any way comparable to those of the Consolidated described herein.

at the meeting that certain employees had "expressed . . . a desire to have a union of some kind" and that he suggested that "perhaps you would like to have a little independent union of your own." He then informed the meeting that Voorhees, an attorney, was experienced in organizing "independent" unions and that he would be glad to secure his services. About 2 weeks later, Sage held another meeting in the plant and introduced Voorhees who proceeded to speak on the advantages of "independent" over "outside" unions. Subsequently Voorhees arranged for the incorporation of the Consolidated. With the Consolidated well established, Sage withdrew when some employees questioned whether he could properly belong to the union in view of his supervisory or executive position with the respondent. Nevertheless, other supervisory officials continued thereafter to play an active part in the Consolidated.

Not only did the respondent form an "inside" union in the face of an organizing drive by the American Federation of Labor but, in addition, it openly indicated its hostility to "outside" unions. At the first meeting which Sage called, he advised employees that the respondent preferred a "house" union to an "outside" union and that Meyberg and Schoenfeld had plenty of money and could close the plant down at any time. Shortly thereafter, Meyberg distributed a "Statement of Facts" in which he emphasized that the employees "do not

have to join any labor union" or "pay dues, levies, [or] any kind of tribute to any organizer or group to hold your job." He added that the respondent's operations were carried on "in a spirit of friendly acquaintanceship," that "there are no inaccessible bosses," that "everyone knows everyone else," and that "we like to feel that we work with, not against, each other." Through this letter, delivered at a time when certain "accessible bosses" were busily engaged in organizing an "independent" union, the respondent made amply clear to its employees that it would not look with favor upon their affiliation with an "outside" union.

In September 1940, when certain employees became dissatisfied with the Consolidated and indicated that they might join an "outside" union, Meyberg treated the employees to dinner and then spoke to them about the unrest among them and urged that "we want to try to work all these things out among ourselves." He then pleaded that the employees should give him "a chance to do something . . . before you call the doctor in." He indicated at this meeting that he would grant a wage increase but that it would be handled through the Consolidated although he admitted that the Consolidated had not requested any wage increases. Subsequently, the respondent granted substantial wage increases of which employees were apprised by notices sent to the Consolidated. Although the Consolidated thereby achieved credit for the raises, it

had previously refused to press the demands of its members for a wage increase. The campaign which eventually induced the respondent to grant the increases was conducted not as a project of the Consolidated, but by the employees generally, both members and non-members of the Consolidated. The Consolidated, in fact, has been consistently reluctant to bargain with the respondent for concessions to which the respondent was opposed; on the other hand, it has always been amenable to the wishes of the respondent. Thus, the Consolidated continuously acquiesced in the respondent's unwillingness to enter into a written agreement.

In other ways, the respondent supported and assisted the Consolidated. In May 1939, Meyberg advised an employee to join the Consolidated "to keep harmony in the firm." In addition, the Consolidated conducted its activities in the plant and received other material benefits from the respondent. On the other hand, when Hill, a foreman, learned that one of the employees had joined the Union, he remarked that it was "sort of bad . . . because I intended to keep you on here," and then commented that the A.F. of L. and the C.I.O. were "a bunch of leeches," and that "we don't want the A.F. of L. in here or any other union." The Consolidated, he advised this employee, had been "taking care" of him.

We find that the respondent dominated and interfered with the formation and administration of the Consolidated and contributed support to it, and

that the respondent thereby, and by warning, advising, and urging its employees not to join or remain members of an "outside" union, by disparaging "outside" unions, by distributing the "Statement of Facts," described above, and by crediting Consolidated with a wage increase in the face of a threat by employees to join an "outside" union, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce.

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent has dominated and interfered with the formation and administration of the Consolidated and contributed financial and other support to it. In order to effec-

tuate the policies of the Act and free the employees of the respondent from such domination and interference, and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, we shall order the respondent to withdraw all recognition from the Consolidated as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of work, and completely to disestablish it as such representative.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, A.F. of L. and Consolidated Seedsmen's Union, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Consolidated Seedsmen's Union, Inc., and contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaran-

teed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Germain Seed and Plant Company, Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Consolidated Seedsmen's Union, Inc., or with the formation or administration of any other labor organization of its employees, and contributing financial or other support to Consolidated Seedsmen's Union, Inc., or to any other labor organization of its employees;

(b) Recognizing Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work and completely disestablish Consolidated Seedsmen's Union, Inc., as such representative;

(b) Immediately post in conspicuous places throughout its places of business in Los Angeles and Van Nuys, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from

the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 31 day of Dec. 1941.

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

GERARD D. REILLY

Member

(Seal) NATIONAL LABOR RELATIONS
BOARD

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GERMAIN SEED AND PLANT COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to
the National Labor Relations Act (Act of July 5,

1935, 49 Stat. 449, c. 372, 29 U.S.C. §151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Germain Seed and Plant Company, Los Angeles, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Germain Seed and Plant Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 595, AFL, Case No. C-1913."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, respondent's motion for continuance, Order postponing date of hearing and extending time for filing answers, respondent's motion to strike, respondent's demand for bill of particulars, respondent's motion to dismiss, respondent's answer to the complaint, hearing for the purpose of taking testi-

mony and receiving other evidence, intermediate report, respondent's exceptions to intermediate report, and order transferring case to the Board, the Board, on December 31, 1941, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Germain Seed and Plant Company, Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Consolidated Seedsmen's Union, Inc., or with the formation or administration of any other labor organization of its employees, and contributing financial or other support to Consolidated Seedsmen's Union, Inc., or to any other labor organization of its employees;

(b) Recognizing Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work, and completely disestablish Consolidated Seedsmen's Union, Inc., as such representative;

(b) Immediately post in conspicuous places throughout its places of business in Los Angeles and Van Nuys, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On December 31, 1941, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Latham and Watkins, respondent's attorneys in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS
BOARD

By ERNEST A. GROSS

Associate General Counsel

Dated at Washington, D. C., this 6th day of March 1942.

District of Columbia: ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ERNEST A. GROSS

Associate General Counsel

Subscribed and sworn to before me this 6th day of March 1942.

(Seal)

DANIEL T. GHENT, JR.,
Notary Public, District of Columbia.

My Commission expires August 31, 1944.

[Endorsed]: Filed Mar. 10, 1942. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENT GERMAIN SEED
AND PLANT COMPANY TO PETITION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Germain Seed and Plant Company, respondent in the above-entitled proceeding, in accordance with Section 10(e) of the National Labor Relations Act (49 Stat. 453, Chap. 372, 29 U. S. C. Section 160(e), approved July 5, 1935), answers the petition presented to this Honorable Court for the enforcement of a certain order of the National Labor Relations Board, hereinafter referred to as the "Board."

In answer to said petition to this Honorable Court, respondent respectfully:

(1) Admits the allegations contained in paragraph (1) of said petition except that respondent denies that it committed any unfair labor practices as alleged in said paragraph;

(2) Admits the allegation in paragraph (2) of said petition that on December 31, 1941 the Board entered the order quoted in said paragraph, but denies for lack of information or belief all the other allegations in said paragraph;

(3) Admits the allegations contained in paragraph (3) of said petition;

(4) Denies for lack of information or belief the allegations contained in paragraph (4) of said petition.

In further answer to said petition, respondent respectfully alleges that the findings of fact of the Board upon which it based its conclusions of law and order are not supported by the evidence.

In further answer to said petition, respondent respectfully alleges that the Board acted without and in excess of its powers and contrary to law in making and entering its conclusions of law and order in this matter by reason of the lack of evidence in support thereof.

In further answer to said petition, respondent respectfully alleges that objection was made before the Board as to the lack of evidence to support the Board's proposed findings, conclusions of law, and order.

In further answer to said petition, respondent respectfully alleges that, assuming the findings of fact of the Board are supported by evidence, paragraph 1(c) of the Board's order is improper and beyond the power of the Board, and is in any event too broad.

Wherefore, respondent prays that this Honorable Court deny the petition of the National Labor Relations Board for the enforcement of its order, that it set aside said order of the Board in its entirety, or if such prayer be denied, that it set aside the said order of the Board in such part as the same

is not supported by evidence or is improper, and in so far as set aside that the Court relieve respondent, its officers, agents, successors, and assigns of any necessity to comply therewith.

Dated: March 25, 1942.

PAUL R. WATKINS,
RICHARD W. LUND,

Attorneys for Respondent
Germain Seed and Plant
Company
1112 Title Guarantee Building
411 West Fifth Street
Los Angeles, California

State of California,
County of Los Angeles—ss.

Richard W. Lund, being duly sworn, says that he is one of the attorneys for respondent, and that he is authorized to and does make this verification on behalf of said respondent; that he has read the foregoing Answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

RICHARD W. LUND

Subscribed and sworn to before me this 25th day of March, 1942.

(Seal) ISOBEL V. HUGHES,
Notary Public in and for said County and State.

[Endorsed]: Filed March 26, 1942. Paul P. O'Brien, Clerk.

[Title of Board and Cause.]

Room 808 United States Post Office and Court House Building, Spring, Temple and Main Streets, Los Angeles, California, Thursday, April 24, 1941.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before:

JAMES C. PARADISE, Trial Examiner.

Appearances:

JAMES A. COBEY, 808 United States Post Office and Court House Building, Los Angeles, California, appearing on behalf of the National Labor Relations Board.

MESSRS. LATHAM & WATKINS,

By PAUL R. WATKINS, 1112 Title Guarantee Building, Los Angeles, California, appearing on behalf of the respondent, Germain Seed and Plant Company. [1*]

RALPH WOOLPERT, 1139 North Ontario Street, Burbank, California, appearing for International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, A. F. L. [2]

Trial Examiner Paradise: I believe that that leaves a motion to strike and a motion to dismiss and a motion for a bill of particulars to be ruled upon by me. Is that not so?

*Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Watkins. Yes, Mr. Examiner.

Trial Examiner Paradise: I have read the papers, gentlemen, and taking the motion to dismiss first, to the extent that the motion is based upon the claim that the third amended charge is not in accordance with the Rules and Regulations, the motion to dismiss is denied, but to the extent that the motion is predicated upon the claim that the respondent is not engaged in commerce within the meaning of the Act decision is reversed.

Now, regarding the demand for a bill of particulars, the motion for a bill is denied with the exception of items 11 and 12, which refer to paragraph 6 of the complaint. I will ask Board's counsel to examine the paragraph and to state whether he is in a position to further particularize the allegation in paragraph 6 which reads:

“by attempting in divers manners to persuade and coerce various of its employees” and so on.

That is an allegation which is unrelated to anything that precedes it and is, therefore, distinguishable from other [10] allegations in the complaint which refer to other acts of substantially similar nature and import. If Board's counsel cannot particularize the allegation in paragraph 6, the Trial Examiner would be inclined to grant the motion to strike it.

Mr. Cobey: Yes, that may be particularized. Would it be acceptable if it is an oral statement at this time?

Trial Examiner Paradise: It would be acceptable to me.

Mr. Watkins: No, we do not want an oral statement. We would like to have it in writing.

Trial Examiner Paradise: I will direct you then to prepare such a statement, referring to that allegation, by the time we reconvene this afternoon at 2:00 o'clock.

Mr. Cobey: All right.

Trial Examiner Paradise: In all other respects the motion for a bill is denied. Similarly, the motion to strike is denied, except with respect to items 4 and 5 of said motion, which refer to the same allegation in paragraph 6 of the complaint, and as to those portions of the motion the disposition will depend upon the compliance by the Board's counsel with the direction that he particularize that allegation in the complaint.

Mr. Watkins: If the Examiner please, I understand then as to the motion for a bill of particulars that 11 and 12 only are granted?

Trial Examiner Paradise: That is correct. [11]

Mr. Watkins: And 9, 10 and 13, which are of a similar nature, are denied? 9, 10 and 13?

Trial Examiner Paradise: That is correct. They are denied.

Mr. Watkins: I just want to say in that connection, Mr. Examiner, I believe from our motion it is probably clear to the Examiner that the purpose of our motion is so that we can be aware of what is sought to be proved here and that it will

not be a limitless clause which permits almost anything to come in. That is the basis of my motion and that is the basis of my question to the Examiner, because I felt 9, 10 and 13 were of a similar character to 11 and 12.

Trial Examiner Paradise: I thought I stated what appeared to be the difference between them. In any event, let me say this: If at any time during the course of the hearing proof should be adduced under those allegations, or as to substantially similar acts, with reference to which the respondent can justifiably claim surprise, the Examiner will be glad to entertain a motion for continuance at that time. [12]

BOARD EXHIBIT 2

[Title of Board and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between Germain Seed and Plant Co. and National Labor Relations Board, each through its undersigned counsel, that:

1. Germain Seed and Plant Co., a California corporation, hereinafter called "Respondent," having its principal offices and place of business at 747 Terminal Street, Los Angeles, California, is engaged in the growing, buying, refining and sale of seeds, bulbs, plants, nursery stock, insecticides, poultry and garden supplies and remedies, and hardware, etc.

2. In connection with the operation of this business, above described, Respondent operates a wholesale and warehouse department at 747 Terminal Street, Los Angeles, California, doing a general wholesale and retail business, a retail store at 625 South Hill Street, Los Angeles, California, a retail store and nursery near Van Nuys, California, a warehouse and wholesale and retail store in San Francisco, California, a retail store at Salinas, California, a retail store at Santa Maria, California, a warehouse at Fresno, California; and a bulb farm at Camarillo, California, which is devoted exclusively to the growing and harvesting of bulbs.

3. On October 31, 1940, the number of employees at the various locations above set forth were as follows:

Wholesale and warehouse, Los Angeles	119
Hill St. Los Angeles	17
Van Nuys	10
San Francisco	11
Salinas	3
Santa Maria	1
Fresno	4
Camarillo	11
<hr/>	
Total	176

4. During the calendar year January 1 through December 31, 1940, Respondent made purchases of various of the above-mentioned products amounting in value to approximately nine-hundred thousand

dollars (\$900,000). Approximately one hundred fifty thousand dollars (\$150,000) of these purchases, constituting roughly 17 per cent of them, originated at points outside of the State of California, including points located within the States of Missouri, Illinois, Idaho, Washington, Oregon, etc.

5. During the calendar year January 1 through December 31, 1940, Respondent sold various of the above-mentioned products amounting in value to approximately one million, five hundred thousand dollars, (\$1,500,000). Approximately three hundred sixty thousand dollars (\$360,000) of these sales, constituting 24 per cent of them, were shipped to points located outside of the State of California.

6. The introduction of this stipulation in evidence by counsel for the National Labor Relations Board at any hearing hereinafter held in this proceeding shall not preclude the introduction by any of the parties to this proceeding of any additional relevant and material evidence concerning the relationship between the operation of Respondent's business and the flow of trade, traffic and commerce among the various States of the United States and between those States and foreign countries.

GERMAIN SEED AND PLANT CO.

By PAUL R. WATKINS

Its Attorneys

NATIONAL LABOR RELATIONS
BOARD

By JAMES A. COBEY

Its Attorney

Dated:

Mr. Cobey: At this time I would like to inquire whether counsel for the respondent would be willing to stipulate, in accordance with the admission made in its answer, that both the Consolidated Seedsmen's Union and the charging union in this proceeding are labor organizations within the meaning of the Act.

Mr. Watkins: I don't believe we need to stipulate if it is admitted in the answer. However, we will so stipulate.

Mr. Cobey: Yes. I would like also to inquire whether counsel for the respondent would be willing to stipulate that the correct name of the respondent is "Germain Seed and Plant Company" with the "and" being written out, and that all references to the respondent in the formal papers to the proceeding and hereafter made be corrected to so state the name of the respondent. [13]

Mr. Watkins: So stipulated.

Trial Examiner Paradise: Very well. The motion is granted.

Mr. Cobey: I should like to call Mr. Sage:

WALTER P. SAGE,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address in a loud voice, please.

(Testimony of Walter P. Sage.)

The Witness: Walter P. Sage, S-a-g-e; 1351 North Coronado Street, Los Angeles, California.

Q. (By Mr. Cobey) Mr. Sage, you will understand that when I refer to Germain's, I am referring to the respondent in this proceeding, the Germain Seed and Plant Company?

A. Yes, sir. [14]

Q. Would you state whether or not you are at present employed by Germain's?

A. Yes, I am.

Q. How long have you been employed by Germain's? A. Twenty-two years.

Q. Would you state what positions you have held with Germain's— A. Yes.

Q. —and the time in which you held those positions?

A. Well, dating back to my going to work for them, I went to work as a shipping clerk, country shipping clerk, and I served in that capacity I think for about a year or a year and a half, and then I was given charge of that department, the entire shipping department.

I held that position about, I think it was about four years, and then I was made traffic manager and superintendent. I held that position for, I believe it was about—no, I would like to correct that. I would like to go back again on that.

I think the first, my first position was shipping clerk and I was in that position about a year when

(Testimony of Walter P. Sage.)

I was given charge of that department, and then I managed the shipping department for, I think it was, two years, and then was made traffic manager and superintendent.

Mr. Watkins: That is superintendent of what, may I ask? [15]

Mr. Cobey: Yes.

The Witness: That took in the order filling department and warehouse and the cleaning plant, and all of those people that were connected with that work. I served in that capacity, I believe it was, about 12 years, and then I was given a position as purchasing agent, and I have been in that capacity since that time and up to the present time.

Q. (By Mr. Cobey) Could you identify as to dates the period in which you held the position of superintendent and also the period in which you have been purchasing agent?

A. Well, I believe the dates would be hard to give you. It was in the —let me see. This is '41—about 1933 or 1934, in the spring of '33 or '34 I was given the purchasing agent's position.

Q. You were superintendent for about 12 years prior to that?

A. Prior to that time, that is correct.

Q. I see. Am I to understand that as superintendent you had charge of the entire warehouse or only a portion thereof?

A. Of the entire warehouse and order filling department, yes, sir.

(Testimony of Walter P. Sage.)

Q. I see. As purchasing agent, you are in charge of all purchases made by the company? Is that correct?

A. No, only in my department.

Q. What is that department?

A. Just the department handling insecticides and spray pumps [16] and miscellaneous items like that. I guess you would call it a sundries department.

Q. I see. Now, Mr. Sage, calling your attention to the latter part of August, 1937, can you recall whether or not at that time there was any talk among the employees about joining labor unions?

A. Yes. It came to me several times that there were some that felt they should be in an organization of some kind.

Q. How did that information come to you?

A. Well, it was expressed to me by different ones in a friendly way.

Q. Can you identify any of the individuals who so expressed themselves?

A. Yes, I think Mr.—I believe Mr. Nesbit was one of them. Let's see. I believe Mr. Hatfield mentioned it to me. It is pretty hard to remember how.

Q. Yes.

A. It is quite some time ago, but at that time there was quite a bit of organization going on throughout the entire city, and I know there was several times that different ones came to me and told me that there was union organizers that were

(Testimony of Walter P. Sage.)

downstairs and calling them together in little groups, and so forth, and they explained to me that they thought really maybe we should have an organization of some kind ourselves, that is, a union.

[17]

Q. Who explained that to you, Mr. Sage?

A. Well, I can't remember whether it was Mr. Nesbit, Mr. Hatfield or some of the other boys around there. I just don't remember quite who that was now.

Q. What action, if any, did you take in the matter?

A. Why, I asked them if they felt like they would like to have a union, why they didn't get together and form a union; the idea being this: Many years ago when I came to work for the company, we had at that time what was known as the Germain Improvement Association. It was anyone that worked for the company and was on the payroll had a right and automatically became a member of that. We had monthly meetings and I remember of attending many of them myself. We had a benefit fund that was contributed to by different ones. That fund was used for various purposes, and I had in mind some such organization as that, that could be formed again. It seemed to be a wonderful thing. It knit everybody together there that was working for the company and put them on what I thought was a very friendly basis, so when the matter was discussed further I asked

(Testimony of Walter P. Sage.)

them if they would like to have such an organization again, in the way of a union, and they said, yes, they thought they would.

Trial Examiner Paradise: Will you identify the people that you spoke to?

The Witness: The two that I have mentioned? These two [18] names? Oh, yes, I have known them for many years.

Trial Examiner Paradise: I know, but can you identify, can you name the persons to whom you stated or asked whether or not they desired to have an organization similar to the one that you had had before?

The Witness: Well, I believe it was these two gentlemen that I have mentioned, Mr. Nesbit and Mr. Hatfield. I am quite sure it was those two.

Q. (By Mr. Cobey) Do you recall any others?

A. I just don't remember who the others were. There is a great many down there and they are always talking to me about this and that and the other thing in a friendly way, and it is pretty hard for me to just single out any particular ones.

Q. Well, now, after these conversations that you have just testified to, did you or did you not call a meeting of the employees?

A. Yes. I asked them if they would like to get together in a meeting with me and discuss the thing further, and I did call them into a meeting.

Q. How was the meeting called?

(Testimony of Walter P. Sage.)

A. Oh, I just sent word around the building and asked them if they would care to enter into a meeting with me after work, Saturday afternoon, and talk the thing over, and they said they would. Whether they all attended——

Q. You say you sent word around the building. You just told [19] certain employees to tell the rest?

A. Yes, just by word of mouth and asked them if they would like to meet with me, and the answer came back, "Yes, be glad to."

Q. (By Mr. Cobey) Mr. Sage, how was notice of this meeting given?

A. Just by word of mouth.

Q. Just by word of mouth?

A. That's right.

Q. Did you or did you not tell certain employees to tell the other employees about this meeting? [20]

A. Yes. I told certain ones, but I don't recall who they were now.

Q. You say this meeting was held on a Saturday afternoon?

A. Yes, I believe that is true, that is was held on Saturday afternoon.

Q. Where was it held?

A. On the shipping floor.

Q. On the shipping floor? A. Yes.

Trial Examiner Paradise: Is this the shipping floor of the warehouse?

The Witness: Yes, that's right.

(Testimony of Walter P. Sage.)

Q. (By Mr. Cobey) How many employees attended that meeting?

A. Oh, that is really—I couldn't tell you. I don't know whether—they weren't all there, I know that, but there might have been as many as 15 or 20. I couldn't really truthfully answer that. I don't know.

Q. Were there both men and women at this meeting?

A. They were all men, as I recall it.

Q. All men? A. Yes.

Q. Do you recall the time on Saturday afternoon at which the meeting took place?

Mr. Watkins: I object to that. It is incompetent, [21] irrelevant and immaterial. The witness testified it was after working hours. That is the material fact.

Trial Examiner Paradise: Overruled.

The Witness: No, I don't remember. It might have been half past one or two o'clock.

Q. (By Mr. Cobey) When was quitting time at that time? A. It was 12:00 o'clock, I guess.

Q. 12:00 o'clock? A. Yes, sir.

Q. You know a Mr. Hill at Germain's?

A. Yes, sir.

Q. Can you tell me what his duties were at this time, that is, August, 1937?

A. Yes. He was manager of the shipping department.

Q. Manager of the shipping department?

A. Yes.

(Testimony of Walter P. Sage.)

Q. Do you know Mr. Gates, who is employed by Germain's? A. Yes, sir.

Q. Can you tell me what his duties were at this time?

A. Yes. He was manager of the warehouse and the mill room.

Q. Were either Mr. Gates or Mr. Hill present at this meeting? A. At the meeting——

Q. The one as to which you have just been testifying? A. Yes.

Q. They were both there? [22] A. Yes.

Q. Do you know Mr. Allan Hook at Germain's?

A. Yes, sir.

Q. Can you tell me what his duties were at this time?

A. I believe he was running the seed cleaning machinery upstairs, under Mr. Gates' supervision.

Q. Now, do you know Mr. Hatfield?

A. Yes, sir.

Q. He is employed at Germain's?

A. Yes, sir.

Q. I believe you mentioned him and Mr. Nesbit?

A. Yes.

Q. And Mr. Luck? A. Mr. Luck, yes.

Q. Were Mr. Hatfield, Mr. Hook, Mr. Nesbit and Mr. Luck at this meeting?

A. Yes, I am quite sure they were at that meeting. I wouldn't be sure about Mr. Luck,——

Q. I see.

A.——but I am quite sure the others were.

(Testimony of Walter P. Sage.)

Q. Now, can you tell me what happened at this meeting?

A. As near as I can remember, I will. I discussed with them at the time whether they thought they would like to have a union or an organization, whatever you want to call it—I don't believe—yes, "union," was mentioned—an independent [23] union of their own, and they all agreed at that meeting that that was the thing they would really like to do. So before the meeting was over they decided that they would like to have me bring someone in to organize them and incorporate them, and asked me if I could suggest someone, some legal man, to do that.

Well, prior to that meeting, I don't know now why or how, I happened to go to the Cudahy Packing Company, but I did go over there and had a talk with a gentleman over there. I don't remember his name either.

Q. Was his name David Stratton?

A. Yes, I think that was the name, and Mr. Stratton referred me to Mr. Voorhees.

Q. Had you known Mr. Stratton prior to this time? A. No, I hadn't.

Q. How did you happen to go to him?

A. I don't know now. I tell you I couldn't answer that. I don't remember who sent me there or how I happened to hear of him, but there was quite a few little independent unions going on at the time, and someone referred me to Mr. Stratton,

(Testimony of Walter P. Sage.)

and they told me, I think, that they had such an organization there and that if I would go there I could get more information about it.

Q. You don't recall who that was?

A. I don't recall who that was. So he told me that he felt [24] that Mr. Voorhees could take care of the matter for us, and that is how I happened to get Mr. Voorhees.

Q. Now, at this meeting as to which you have just testified, you presided, didn't you

A. Yes.

Q. You were the only speaker?

A. Yes, I was the only speaker.

Q. Can you state more definitely what was said at that meeting?

A. Well, I can remember one part of it. I told them, I said, "several of you boys have come to me and told me that there were different union organizers coming into the plant talking to groups, and that you had expressed to me a desire to have a union of some kind," and I made the suggestion that, "Perhaps you would like to have a little independent union of your own." And they agreed that that was the thing they had in mind and the thing that they really wanted to do.

Now, regarding the rest of it——

Q. Well, Mr. Sage, did you or did you not back up your suggestion that perhaps what they would like to have was an independent union with any arguments in favor of an independent union?

(Testimony of Walter P. Sage.)

A. No, I didn't, because they seemed to agree, and they seemed to try to tell me that that is what they wanted. At least, that is what several of them suggested themselves, that [25] that is what they would like to have.

Q. Do you recall whether or not you made any mention of the names of Mr. Meyberg and Mr. Schoenfeld at that meeting?

A. No, their names were never mentioned.

Q. Would you mind stating just who Mr. Meyberg and Mr. Schoenfeld are and were at that time?

A. Mr. Meyberg is the president of our company, and Mr. Schoenfeld is our vice president.

Q. Now, that is all that you recall of what was said at that meeting?

A. That is all, yes, sir. The meeting really was—

Q. How long did it last?

A. Oh, I don't believe we were there over ten minutes; possibly fifteen at the outside.

Q. Now, I think you testified that the fellows at the meeting decided that an independent union was what they wanted?

A. Yes, sir.

Q. How was that decision reached?

A. Well, when I advanced the idea that that would suit our needs pretty well, they all seemed to sanction that and say yes, they thought that is what they wanted, they thought they wanted a union of some kind and the idea seemed to please them. seemed to be what they wanted.

(Testimony of Walter P. Sage.)

Q. What about Mr. Hatfield, Mr. Sage? Did he go along with that idea at that time? [26]

A. I don't recall whether he did or not. I don't remember whether Mr. Hatfield said anything or not.

Q. (By Mr. Cobey) Mr. Sage, after you contacted Mr. Stratton, as you said, and he recommended Mr. Voorhees to you, did you or did you not get in touch with Mr. Voorhees?

A. Yes, I did, after being asked—after being requested to get in touch with a legal man, I did get Mr. Voorhees.

Q. Do you happen to recall whether or not Mr. Voorhees came down to any meeting of the employees thereafter?

A. Yes. He attended a meeting at the—I believe it was on the shipping floor afterwards.

Q. On the shipping floor? A. Yes.

Q. Do you recall when that meeting was held?

A. No, I don't.

Q. Do you recall how long after this first meeting, as to which you have just testified, this second meeting which Mr. Voorhees attended was held?

A. It might have been two weeks or three. I just couldn't remember that; two or three weeks.

Q. Did you make the arrangements for Mr. Voorhees to come [27] down to the meeting?

A. I requested him to come down.

Q. Did you make the arrangements for the meeting?

(Testimony of Walter P. Sage.)

A. Yes, I did. I asked him to meet with us, I think. That was on a Saturday afternoon also. Yes, I am sure it was.

Q. How did you get word to the employees of this meeting?

A. The same way that I did the first time, just requested them by word of mouth, told them I would have Mr. Voorhees present there on Saturday afternoon, and they agreed that was all right and they attended that meeting.

Q. Was this meeting held at the same time on Saturday afternoon, roughly, as the previous meeting?

A. Yes, I would say about the same time.

Q. It was held in the shipping room of the warehouse?

A. That is right.

Q. How many employees were there?

A. Well, I couldn't say. It looked to me like practically all of them, I believe. There might have been an exception here or there. I couldn't answer that. [28]

Q. (By Mr. Cobey) Who presided at this second meeting?

A. I introduced Mr. Voorhees.

Q. Do you remember what you said when you introduced him?

A. I just merely told them that they had requested me to bring a legal man to them, and that I had done so, and wished to present Mr. Voorhees. That was about all I had to say.

(Testimony of Walter P. Sage.)

Q. I will ask you: Did Mr. Voorhees speak at this meeting?

A. Yes, Mr. Voorhees spoke at the meeting.

Q. Did anyone else speak?

A. I don't remember whether anyone else spoke at that meeting or not. That is a long time ago. I don't remember that.

Q. Do you have any recollection of what Mr. Voorhees said?

A. No. I really don't. I wouldn't like to have to answer that. I don't remember that either now.

Q. Can you tell us whether or not Mr. Hill or Mr. Gates were at this meeting?

A. Yes, they were.

Q. Can you tell us whether or not Mr. Hill or Mr. Gates took [29] any part in this meeting, besides attending?

A. No, sir, they did not. As I recall now, they were both dismissed from that meeting. Yes, they were dismissed from that meeting.

Q. Who dismissed them?

A. Mr. Voorhees.

Q. Mr. Voorhees? A. Yes, sir.

Trial Examiner Paradise: Can you tell us how that happened, Mr. Witness?

The Witness: Yes, sir. I believe it was Mr. Hill asked a question of Mr. Voorhees regarding his—the line of work he was doing there, and Mr. Voorhees answered the question and told he and Mr. Gates both that they should not be present at that

(Testimony of Walter P. Sage.)

meeting, and as I remember it, they both walked out of the meeting right then and there.

Q. (By Mr. Cobey) Can you tell us whether or not Mr. Hatfield and Mr. Hook and Mr. Nesbit and Mr. Luck were there?

A. I am quite sure they were there. I don't remember about Mr. Luck so plainly, but I am quite sure Mr. Hatfield, Mr. Hook and Mr. Nesbit were at that meeting.

Q. How long did this meeting last?

A. I don't believe it was over half an hour. Maybe three-quarters of an hour at the outside.

Q. What part in the meeting did you take, aside from your [30] introduction of Mr. Voorhees?

A. None. Just was a good listener, that's all.

Q. In other words, after you introduced Mr. Voorhees, he took the meeting over?

A. That is right.

Q. I think you have testified that no one else spoke at this meeting, aside from Mr. Voorhees?

A. No, I don't remember that.

Q. Do you happen to recall whether or not Mr. Stratton was there?

A. It seems to me he was, but just to be sure now, I wouldn't like to say for sure. I think there was someone there with Mr. Voorhees; I am pretty sure.

Q. You don't recall anything else beyond what you have testified, as to what happened at that meeting—

A. No, sir.

(Testimony of Walter P. Sage.)

Q. ———or as to what was said?

A. No, sir, I don't. I really don't.

Q. Now, do you happen to know if after this meeting as to which you just testified there were any other meetings of the employees?

A. There was a meeting held, I believe, at the Hill Street store. You mean where Mr. Voorhees was present?

Q. No, I would just like to know whether, to your own knowledge, you know there were any other meetings? [31]

A. Oh, no, sir. I don't know of any others at all.

Q. You don't know of any others?

A. No, sir.

Q. There were no other meetings in which you participated? A. No.

Q. Are you familiar with the Consolidated Seedsmen's Union?

A. No, I am not, and the reason for that is because I was also told that I couldn't belong to the union.

Q. Who told you that? A. Mr. Voorhees.

Q. Mr. Voorhees?

A. Yes. He dismissed me immediately.

Q. Then am I to understand that following this introduction of Mr. Voorhees at this second meeting as to which you have testified, that your participation in this move to form an independent union ended at that point? Is that correct?

(Testimony of Walter P. Sage.)

A. It wasn't right at that point. There was a meeting held at the Hill Street store, and at that meeting was the meeting I was dismissed and told that the meeting was not even open until I left the premises, so I left.

Q. When did that meeting occur?

A. That might have been two weeks or three weeks after the shipping floor meeting. The shipping floor meeting, I believe, was just to introduce Mr. Voorhees, as a preliminary meeting was all, and then there was a meeting called at the [32] Hill Street store.

Q. You mean the Hill Street store of Germain's?

A. Yes.

Q. When was that meeting held?

A. I don't recall, but it seems to me it might have been two or three weeks after that.

Q. You are not sure about the lapse of time between these various meetings, of course?

A. No, I am not. I really am not, as it was at the Hill Street store meeting where I was dismissed.

Q. What was the time at which the Hill Street store meeting was held?

A. It might have been 7:30 or 8:00 in the evening.

Q. Do you remember how many employees were present?

A. I don't remember how many, but it seemed to me that most of the organization was there, and at that meeting the women were present.

(Testimony of Walter P. Sage.)

Q. I see. Now, am I to understand from your testimony that you were not present throughout the Hill Street store meeting?

A. Oh, no, sir. I wasn't permitted to stay. They didn't even open that meeting and I was told to leave immediately. I don't know what transpired at that meeting.

Q. Mr. Voorhees was the one who told you to go?

A. Yes, sir. [33]

Q. Do you happen to know whether anyone else besides yourself was excluded?

A. No, sir, I don't. I left the meeting. They told me to go.

Q. And that, to the best of your recollection, terminated your participation——

A. That is correct.

Q. ——in this move to form an independent union? A. That's right.

Mr. Cobey: I suppose, Mr. Examiner, it will be understood when I refer to "Independent Union," I am referring to the Consolidated Seedsmen's Union and the move to form that union, and that my characterization of the union as "Independent" is not binding upon the Board.

Q. (By Mr. Cobey) What is your full name, Mr. Sage? A. Walter P. Sage, S-a-g-e.

Q. You are certain that you had no further connection—— A. That is right.

Q. ——with this movement after that date?

A. Yes.

(Testimony of Walter P. Sage.)

Q. To refresh your recollection, I would like to show you this document, which I will ask to have marked as Board's Exhibit 3, for identification.

(The document referred to was marked Board's Exhibit 3, for identification.) [34]

Mr. Watkins: May I see it, Mr. Cobey?

Mr. Cobey: Yes, certainly.

(The document referred to was handed to counsel.)

Q. (By Mr. Cobey) I show you Board's Exhibit 3, for identification, and call your attention to the name, "W. P. Sage." Does that refresh your recollection at all? Will you examine Board's Exhibit 3, for identification, please?

(Handing document to witness.)

Mr. Watkins: I object to the question as being argumentative and assuming facts not in evidence. There is no indication yet of the date of this particular agreement, or as being in any way contrary to the testimony the witness has given.

Trial Examiner Paradise: Overruled.

The Witness: You mean that—I don't quite understand this. Would you mind explaining it to me? You mean——

Q. (By Mr. Cobey) Board's Exhibit 3, for identification, purports to be a preorganization agreement of certain employees of the Germain Seed and Plant Company. Now, at the bottom of this agreement, and also being a part of Board's Exhibit

(Testimony of Walter P. Sage.)

3, for identification, there is a list of typewritten names headed by the word "signatures." Among the signatures there is the name, "W. P. Sage." I wondered whether that refreshed your recollection.

A. You mean where I became a member or joined or paid a fee, or something like that? [35]

Q. Well, Board's Exhibit 3, for identification, would indicate that this preorganization agreement was signed by the persons whose signatures are typewritten below.

A. I don't believe I ever signed anything like that.

Trial Examiner Paradise: Is the question you are now addressing to the witness or is the paper which you are showing the witness to refresh his recollection as to the time when he severed his connection with the independent union movement?

Mr. Cobey: Yes, as to the time.

Trial Examiner Paradise: Now, Mr. Witness, can you answer that question: Does that paper refresh your recollection as to the date when you severed your relationship with this independent movement?

The Witness: No, sir, it doesn't. No, it doesn't.

Q. (By Mr. Cobey) Do you happen to know, Mr. Sage, whether there are any other persons by the name of Sage or were there any other persons by the name of Sage in the employ of Germain's during the fall of 1937?

A. Not to my knowledge. I am the only one.

(Testimony of Walter P. Sage.)

Q. There was no other W. P. Sage besides yourself?
A. No, sir.

Mr. Cobey: That is all.

Trial Examiner Paradise: As I understand the witness' testimony, Mr. Cobey, he hasn't denied having signed a paper [36] similar to that. I don't believe that specific question was put to him, as a matter of fact. All he was asked was whether his recollection was refreshed by looking at that paper.

Mr. Cobey: Yes, that is right.

Q. (By Mr. Cobey) I will put to you that question: Do you recall signing any paper similar to Board's Exhibit 3, for identification?

A. No, I don't remember signing any paper like that.

Q. But, to your knowledge, you are the only W. P. Sage that was in the employ of the company at that time?
A. Yes, that is right.

Q. Now, during this period as to which you have just been testifying, which period ran, roughly, would you say, from the latter part of August, 1937, to early September, 1937? Do you have any recollection on that point?

A. No, I don't remember that either. I don't know how long ago this was started. Let me see. I don't recall how long the—how long ago it was now.

Q. But I understand from your testimony that during that period you had certain discussions with the employees about this question?

A. In the beginning.

(Testimony of Walter P. Sage.)

Q. In the beginning?

A. Very few discussions with them.

Q. Where did those discussions take place? [37]

A. Oh, perhaps when I was going out to my lunch I would meet one or the other of them in the doorway, and they would say some little thing to me about the matter, or maybe in the morning when I would come to work one of them might say some little thing about it. But there was very little discussion about it until that first meeting, and then I asked them if they wanted to meet with me about it. I said, "You fellows keep running to me about this thing. Now, you must want to do something about it. Now, would you care to meet with me and let us discuss this thing and see what you have on your mind."

They said they would. They said they were waiting for someone to get them together and have a talk with them.

Q. Do you recall whether or not any of these discussions you had with them took place during working hours?

A. No. No, there wasn't any during working hours, as I remember.

Q. At that time you had no occasion to walk throughout the plant in the course of your duties?

A. Oh, no. No, my present position holds me pretty close to my office, and to my desk. I don't get around very much.

Q. So it is your testimony that these discussions took place on the way to lunch?

(Testimony of Walter P. Sage.)

A. Or in the morning.

Q. Or in the morning when you came to work?

[38]

A. Or in the evening when I would leave someone might say a little something to me about it.

Q. These discussions took place down at the warehouse, didn't they?

A. Yes, they did.

Q. Now, do you recall whether or not during any of these discussions you engaged in arguments as to the relative merits of an independent union and an outside union?

A. Oh, no. There was never any argument at any time.

Q. No argument at any time?

A. No, a very friendly discussion all the way through.

Q. (By Mr. Cobey) Mr. Sage, I think you testified that at the first of these meetings of these employees that were there, some of them asked you how they should go about forming such a union and also about the incorporation of such a union. Is that correct? [39]

A. That's right.

Q. Do you recall whether or not you talked to them about incorporation?

A. No, I didn't. I didn't, because I wouldn't be qualified to talk on a subject like that. I know absolutely nothing about incorporating.

Q. But you remember that they asked you about incorporation?

(Testimony of Walter P. Sage.)

A. They said that they wanted to form the union, and I said, "Well, I think then you should have a legal man to do that for you."

And they asked me if I knew of anyone, and I told them I did through what Mr. Stratton told me about Mr. Voorhees, and that I would be glad to get a man for them if they wanted one.

Q. But you can't recall who referred you to Mr. Stratton?

A. No, sir. That is something I don't remember now. I wish I did.

Q. Mr. Sage, do you recall whether or not during this period as to which you have been testifying there was any general meeting of the department heads of Germain's? A. No, there wasn't.

Q. There wasn't any general meeting?

A. No, sir.

Q. You were never called into consultation?

A. Absolutely not. The reason—— [40]

The Witness: (Continuing) ——I knew that there would never be any objection if we had our own Improvement Association back. It was always acceptable, and I knew that I would not be criticized if such an organization came back into being. I never discussed the matter at all with anyone outside of the employees themselves.

Q. (By Mr. Cobey) Will you tell us when the Germain Improvement Association existed?

A. Well, 22 years ago when I came to work for them, it was in existence then.

(Testimony of Walter P. Sage.)

Q. How long was it in existence?

A. It was in existence before I ever worked for them. So I understood after I became an employee myself.

Q. How long did it remain in existence after you went to work there? Do you recall?

A. That I don't recall now, but it was quite a long time [41] after I worked there that our meetings were still held.

Q. But is it your recollection that the Improvement Association had been dead for several years prior to this time? That is, for say ten years?

A. I don't even believe it is dead yet. There are a lot of them are members yet and talk about it.

Q. Well, are monthly meetings still being held?

A. No.

Q. When were they stopped?

A. That I don't recall now, how long ago it was.

Q. Would you say it was five years or ten years before this meeting?

A. Yes, it may have been. It may have been that long.

Q. You wouldn't know whether it was five or ten?

A. No. I just don't remember when the last meeting was held by the Improvement Association.

Cross Examination [42]

Q. (By Trial Examiner Paradise) Mr. Witness, what are your duties as purchasing agent?

(Testimony of Walter P. Sage.)

A. I buy merchandise for one of our departments, I keep a cost card system, check my invoices, interview sales people that come in my office, work on price structures. That's about all. [43]

Q. Do you have supervision over any employees?

A. No, sir.

Q. There is nobody working under you at all?

A. No, sir.

Q. What is your relationship, if any, to the workers in the warehouse?

A. Well, they recognize that I am purchasing for that department, and it is just merely cooperation between us, telling me when stocks are low and when I should replenish by further purchases, and things of that kind, giving me stock reports.

Q. Do you have any authority over any of the employees in the warehouse? A. No, sir, none.

Q. None with respect to either hiring or discharging them? A. No, sir.

Q. Or with respect to controlling work that they do?

A. No, I don't control the work they do; only in a cooperative way, that is all.

Q. What do you mean by that?

A. Well, if I ask them if we are low on a certain line that I am carrying, they will give me back a stock report, that is all. They wouldn't have to, if they didn't want to. I have no authority over them.

Trial Examiner Paradise: I have nothing further. [44]

(Testimony of Walter P. Sage.)

Q. (By Mr. Watkins) Just two questions in connection with the questions asked you by the Examiner. When you refer to the warehouse and your connection with it, that is only a part of the warehouse operation, is it not? A. That is true.

Q. The second question is: Is your answer the same, which you gave to the Examiner's questions about any supervision you might have or connection with employees,—is it the same for the period under discussion, that is, the fall of 1937?

A. That is correct.

Mr. Watkins: That is all.

J. P. VOORHEES,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and [45] address, please?

The Witness: J. P. Voorhees, 5338 Crenshaw Boulevard, Los Angeles.

Trial Examiner Paradise: How do you spell the name, please?

The Witness: Voorhees, V-o-o-r-h-e-e-s.

Trial Examiner Paradise: All right.

Q. By Mr. Cobey) Mr. Voorhees, you are a practicing attorney locally? A. That is right.

(Testimony of J. P. Voorhees.)

Q. You were a practicing attorney during the fall of 1937? A. I was.

Q. Now, you were in the court room here during the testimony of Mr. Sage? A. I was.

Q. You heard that testimony? A. I did.

Q. Do you recall the circumstances under which Mr. Sage got in touch with you?

A. I do not, no.

Q. Do you recall that he was the person that got in touch with you in connection with this Germain situation?

A. I have no definite recollection of it, but from his testimony on the stand I would say that he is correct; that he either called me or came to see me, I wouldn't know which. I [46] think he called me.

Q. Do you recall this meeting as to which he testified that you were present and spoke?

A. You mean the meeting at the warehouse?

Q. Yes. A. Yes, I remember that.

Q. Do you remember what you said at that time?

A. In general, yes. Specifically, no.

Q. Well, what was the substance of what you said?

A. The substance of what I said was that the employees had a right to form or join any union that they pleased, without the employer having any voice in the matter, and that they had a right to belong to any organization that they might desire, that they could form an independent union if they

(Testimony of J. P. Voorhees.)

wished and that there were some independent unions in Los Angeles at that time; and that the dues in an independent union were considerably smaller than the dues in other unions, and that they would be able to control and operate their union without the aid of any business agent or outside help, and that if they would form such an independent union, I would advise them to form under the non-profit corporation laws of this state, so that none of them would be personally liable for any of the debts of the organization or any liabilities of the organization.

Q. Is that all you said, as you recall, or the substance of [47] what you said?

A. Well, I believe that my memory was refreshed by the testimony of this last witness. I believe I told them that the only persons eligible to belong to a union were the workers, and that those who had the right to hire or fire or discipline employees, or who were in executive positions, did not have the right to belong to any union. And I believe that someone at that time did define his duties to me, and I informed him that he was not eligible to belong to the union and should not participate in that meeting. I have just a hazy recollection of that, which was refreshed entirely from this last witness' testimony.

Q. Do you recall whether or not you were the only speaker at this meeting?

(Testimony of J. P. Voorhees.)

A. On that point I also have a hazy recollection, and I would say, with qualifications, without being certain, that Mr. Stratton was present and spoke. What he said I have no recollection at all.

Q. Can you identify Mr. Stratton any further, as to the position he held at that time?

A. Mr. Stratton at that time was the secretary and business agent of the independent union at the Cudahy Packing plant.

Q. You don't recall what Mr. Stratton said?

A. I do not.

Q. Do you recall anything of what he said? [48]

A. Very hazily. I think he told them something about the way in which the independent union at Cudahy's was being operated.

Q. Mr. Voorhees, do you recall anything of the Hill Street store meeting, which was referred to in the testimony of Mr. Sage.

A. Yes. The Hill Street store meeting was called after the articles of incorporation had been signed and sent to Sacramento and were returned, and I believe after the by-laws had been adopted by the incorporators, and was called for the purpose of explaining to the employees what had been done by the incorporators and to let them determine whether they wished to become members of the organization, to explain to them the by laws and to permit them to decide whether they wished to join.

I recall that someone in the group—at that time

(Testimony of J. P. Voorhees.)

there were far more employees present than were present at the meeting in the warehouse—and at that time someone asked the same question, as to who was eligible to belong to the union, and I gave them the same answer, that a person who had the right to hire or fire or to discipline employees or who was in an executive position could not belong to the union. And several of them, I believe, contended that Mr. Sage was in that position, and I stated that since they felt he was in that position or occupied some position of that character, that he had no right in the meeting whatsoever, and I asked him to leave the meeting [49] and leave the building, I believe.

Q. Do you recall whether or not you excluded anyone else?

A. I don't know that I did, but I can't recall positively. It seems to me that there was one other person who placed himself or who thought he might be in that category; one or two others. Now, I can't remember.

Q. Do you recall who presided at this Hill Street store meeting?

A. Well, Mr. Sage introduced me and I started explaining the articles and by-laws, and then someone raised this question. I believe one of the incorporators presided.

Q. Mr. Frauenberger?

A. Well, I say yes, with qualifications. I can't remember his name, but someone——

(Testimony of J. P. Voorhees.)

Q. Do you recall what he looked like?

A. No, I don't.

Q. Mr. Voorhees, do you recall whether or not at the conclusion of this Hill Street store meeting an election was held?

A. I don't recall of any election being held. It seems to me that there was a motion of some sort to accept the by-laws or to approve the by-laws and to become members of the organization.

Q. You don't remember whether or not there was any election?

A. Of officers, do you mean?

Q. No, of accepting the union. [50]

A. Well, as I say, I think there was a motion—

Q. Yes.

A. —to the effect that the acts of the incorporators be approved, and that the by-laws be approved, and that they become members of the organization. I think the minutes would speak for themselves. At least, they should. There should be a record there, should be minutes of that meeting. In fact, I think I found the minutes a moment ago when I was looking in the minute book.

Q. (By Mr. Cobey) Mr. Voorhees, am I to understand that you acted as attorney for this union throughout the period of its establishment? In other words, you handled the legal end of the setting up of this union?

A. Well, your question isn't quite clear. What

(Testimony of J. P. Voorhees.)

I think you mean is this: Was I retained by them all of the time?

Q. Yes.

A. No, I was not. I was employed to draw up their articles of incorporation and their by-laws, and to explain the by-laws and the articles, and on two or three occasions thereafter [51] some officer or director of the corporation talked with me. I believe on one occasion or two occasions the Board of Directors came to my office and consulted with me. I did not consider I was retained as their attorney. They, as occasion required, saw fit to consult with me further.

Q. Well, did you or did you not draft the articles and the by-laws for the union? A. Oh, yes.

Q. And the other organizational documents?

A. Well, what do you mean by "other organizational documents"?

Q. Well, I show you Board's Exhibit 3, for identification, headed "Preorganization agreement." Do you recall whether or not you drafted that?

A. I believe that I did. I believe that I drafted the portion appearing above the signatures. [52]

BOARD EXHIBIT 3

Copied from minute book of Consolidated Seedsman's Union, proofread by Gladys Van Sickles, April 17, 1941.

PRE-ORGANIZATION AGREEMENT

We, the undersigned, employees of the Germain Seed & Plant Company, desire to form an independent union, for the purpose of dealing with our employer under the provisions of the National Labor Act, known as the Wagner Act, and we do hereby appoint W. S. Clark, Harold Frauenberger, Dorothy Turton, K. R. Luck, A. Hook, H. B. Orr, and Morris Stearn as a committee to formulate an independent union for us and to represent us with our employer under the provisions of the National Labor Relations Act known as the Wagner Act.

Each of the undersigned has or will pay \$1.00 as Initiation Fee for membership in the union, and 50¢ a month as dues commencing one month after becoming a member.

SIGNATURES:

Ramon Magdaleno

Denver Hysell

Amos S. Kays

Theodore Schrader

Morris Stearn

Erich Regan

A. G. Russell

Mary B. Martinez

Harry B. Orr

Lewis B. Williams

Minnie Therese Sievers

A. Coleman

L. Poor

Harry Fenster

A. W. Huskins

Blanche L. Eaton

Estella Gunter

Viola B. Gates

Myrtle Butterfield

Dean S. Westfall

Charlotte Miller

Fern A. Wingrove

Edna Hutchinson

Justin Scharff

C. L. Van Doren

C. C. Fitzgerald

Dorothy Turton

E. H. Bishop

C. Douglass

T. Tanabe

W. P. Sage

A. Stanley Williams

Al Isleib

C. C. Charles

Ella Saylor

W. S. Clark

(Testimony of J. P. Voorhees.)

O. E. Johnson	Patrick J. Chavez	Stanley Watson
E. J. Porter	Josephine Cook	Charles F. Hill
T. Farley	Alice Hook	Louis Marquez
T. G. Harrison	Mary Ann Miller	Jack Butterfield
Ethel F. Durand	Iris Slafter	R. H. Montgomery
Louise Grow	Pearl Ewin	Bill Epperson
Converse	Erma Wright	Harold Frauenberger
Mary Court	Grace Wall	K. R. Luck
Cadd	Daisy Von Zell	Mae Molyneux
Eleanor Newmark	Grace Bland	Frances Fox
W. J. Smith	Otto Witt	M. Busching
E. Ganster	D. G. Hatfield	Virginia Bland
Leonard G. Wade	A. Hook	Cora V. Dempsey
Verna Newman	Edward G. Casey	Betty Anderson
V. J. Nesbit	A. Vanderveer	Florence May Siemsen
F. A. Wall Jr.	Evelyn Smead	L. Helen Martin
D. L. Cramsey	Ruth Dorothy Gray	Nyda Hansen
F. A. Wall	Marion Y. Otto	Emily Nelson
James Neal	J. H. Colbry	Corinne Harger
Roy O. Yoakum	Bob J. Kadous	Ida New
Paul D. Spence	Frank H. Miller	Marguerite L. Bailey
Alfred A. Freeman	Richard Kadous	Pearl Siemsen
Elizabeth Garnett	Eric G. Hulphers	Dorothy Davis

BOARD EXHIBIT 4-A

ARTICLES OF INCORPORATION OF CONSOLIDATED SEEDSMAN'S UNION

Know All Men By These Presents:—

That we, the undersigned, citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a non-profit corporation under the general non-profit corporation law of the State of Cali-

(Testimony of J. P. Voorhees.)

fornia, being Title XII, Part IV, Division First of the Civil Code of the State of California.

We hereby certify:

First: That the name of said corporation shall be Consolidated Seedsman's Union.

Second: That the purposes for which said corporation is formed are:

(a) To deal with our employer Germain Seed and Plant Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment.

(b) To protect the interests and promote the general welfare of our fellow employees and ourselves.

(c) To do each and every other act necessary to carry out the purposes above set forth.

Third: That said corporation is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

Fourth: That the County in this State where the principal office for the transaction of the business of the corporation is to be located is the County of Los Angeles.

Fifth: That the number of directors of the corporation is seven (7) and the names and addresses of the persons who are appointed to act until the first annual meeting of the members of the corporation, or until the election and qualification of their successors are as follows, to-wit:

(Testimony of J. P. Voorhees.)

Names.	Residences.
Harold Frauenberger	1514 S. Berendo Street Los Angeles, California
Dorothy Turton	2415 12th Avenue Los Angeles, California
Allan Hook	9000 McNerney Avenue Los Angeles, California
Morris Stearn	5901 Ethel Avenue Van Nuys, California
Harry B. Orr	1801 S. Chapel Avenue Alhambra, California
Richard Luck	210 W. 43rd Place Los Angeles, California
William S. Clark	1129 N. Cogswell Road El Monte, California

Sixth: Units of this corporation, to be known as Locals, may be established at such times and places as may be authorized by the Board of Directors.

Seventh: The number of directors, tenure of office and qualifications for office, may be changed from time to time by a duly adopted By-law or By-laws or by a duly adopted amendment or amendments to the By-laws.

(Testimony of J. P. Voorhees.)

In witness whereof, we have hereunto subscribed our names this 9th day of September, 1937.

HAROLD FRAUENBERGER
DOROTHY TURTON
ALLAN HOOK
MORRIS STEARN
HARRY B. ORR
RICHARD LUCK
WILLIAM S. CLARK

State of California,
County of Los Angeles—ss.

On this 9th day of September, 1937, before me, J. P. Voorhees, a Notary Public in and for the County of Los Angeles, State of California personally appeared Harold Frauenberger, Dorothy Turton, Allan Hook, Morris Stearn, Harry B. Orr, Richard Luck, and William S. Clark personally known to me to be the persons named as directors in the within instrument and whose names are subscribed thereto, and severally acknowledge to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

J. P. VOORHEES

Notary Public in and for said County and State.

[Endorsed]: Filed Sep. 17, 1937. Secretary of State.

BOARD EXHIBIT 4-B

Copied from minute book of Consolidated Seedsman's Union. Proofread by Gladys Van Sickles, April 17, 1941.

MINUTES OF FIRST MEETING OF
INCORPORATORS

The first meeting of the incorporators of the Consolidated Seedsman's Union was held at the offices of Voohees & Voorhees, 5325 Crenshaw Blvd., in Los Angeles, California, at 8 o'clock P.M. on the 20th day of September, 1937, in pursuant of the foregoing Call and Waiver of Notice.

Mr. Harold Frauenberger called the meeting to order and stated that it was called for the purpose of completing the organization of the Corporation and adopting By-Laws.

On motion duly made, seconded, and carried, Mr. Harold Frauenberger was elected Chairman of the meeting, and Dorothy Turton was elected Secretary of the meeting. Upon a rollcall being taken, it was found that three of the incorporators, namely Allan Hook, Harry B. Orr, and William S. Clark were absent. A motion was duly made, seconded, and carried that the persons present, namely Harold Frauenberger, Dorothy Turton, Morris Stearn, and Richard Luck, being a majority of the incorporators, proceed with the business of the meeting.

A certified copy of the Articles of Incorporation of said Corporation then being exhibited, on motion

(Testimony of J. P. Voorhees.)

duly made, seconded, and carried, said certified copy was duly accepted.

On motion duly made, seconded, and carried, the Directors named in the certified copy of the Articles of Incorporation were recognized as the first Directors of said Corporation.

A draft of By-Laws having previously been prepared, was then submitted for consideration. A motion was duly made, seconded, and carried that the By-Laws as drafted be adopted in the form appearing on the pages of this minute book, at the end of which appears the signatures of the incorporators present at this corporation meeting.

There being no further business before the meeting, by motion duly made, seconded, and carried, it was adjourned.

/s/ DOROTHY TURTON

Secretary

/s/ HAROLD FRAUENBERGER

Chairman

BOARD EXHIBIT 4-C

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

MINUTES OF FIRST MEETING OF DIRECTORS

The first meeting of the Board of Directors of the Consolidated Seedsmen's Union was held at the

(Testimony of J. P. Voorhees.)

offices of Voorhees & Voorhees, 5325 Crenshaw Blvd., in Los Angeles, California, at 9 o'clock P.M. on the 20th day of September, 1937, in pursuant of the foregoing Call And Waiver Of Notice.

Harold Frauenberger was chosen as Temporary Chairman and Dorothy Turton was appointed as Temporary Secretary of the meeting.

On a rollcall of the Directors by the Secretary, the following were found to be present: Harold Frauenberger, Dorothy Turton, Richard Luck, and Morris Stearn. A quorum being present, on motion duly made, seconded, and carried, the Board proceeded to consider the resignations of three Directors, namely Allan Hook, Harry B. Orr, and William S. Clark. A motion was made, seconded, and carried that said resignations be accepted and their offices be declared vacant.

A motion was made, seconded, and carried that Thomas Farley, Harry Fenster, and D. G. Hatfield be elected as Directors to succeed the Directors whose resignations have been accepted, Thomas Farley to be the Director representing Division Four, Harry Fenster to be the Director representing Division Six, and D. G. Hatfield to be the Director representing Division Three.

The resignation of Dorothy Turton as Director was read, and on motion duly made, seconded, and carried, said resignation was accepted and her office was declared vacant.

(Testimony of J. P. Voorhees.)

A motion was made, seconded, and carried that Blanche L. Eaton be elected as Director to succeed Dorothy Turton as Director, Blanche L. Eaton to be the Director representing Division Four.

Said newly elected Directors being then called into the meeting, were informed of their election and each accepted the office.

A motion was then made, seconded, and carried that the Board proceed with the election of officers of the corporation to serve for the ensuing corporation year and until the election and taking office of their successors.

The following officers were duly elected:

President—Harold Frauenberger

Vice-President—Thomas Farley

Secretary—Dorothy Turton

Treasurer—Dorothy Turton

It was moved, seconded, and carried that election of additional officers be deferred until a future meeting. The duly elected officers then proceeded to take their respective offices.

A form of application for membership was submitted and examined and motion was made, seconded, and carried that the proposed form be adopted and that a sufficient number to meet the requirements be printed.

Motion was duly made, seconded, and carried that the bank account of this Corporation be opened with

(Testimony of J. P. Voorhees.)

the Security First National Bank Branch at Seventh and Central Streets, Los Angeles, California.

Motion was duly made, seconded, and carried that the signatures of the President and Secretary be necessary on all warrants for the expenditure of any funds of the Union.

A motion was made, seconded, and carried that the membership certificate be in the form of a membership card, as provided in the By-Laws.

Motion was made, seconded, and carried that a Seal bearing the words "Consolidated Seedsmen's Union, Incorporated the 17th day of September, 1937, California", and identified by an impression thereof on the margin of this page, be and hereby is adopted as the Seal of this Corporation.

(Seal)

Motion was made, seconded, and carried that the Secretary be and hereby is ordered to file with the County Clerk of Los Angeles, California, a certified copy of the Articles of Incorporation for public record in accordance with the law.

Motion was made, seconded and carried that the address of the Secretary, namely 2415 Twelfth Avenue, Los Angeles, California, be used as the official address of this Corporation.

Secretary read a letter authorizing this Corporation to be exempted from the prepayment of Franchise Tax from the Franchise Tax Commis-

(Testimony of J. P. Voorhees.)

sioner of the State of California. This letter was ordered filed.

Motion was made, seconded, and carried that the Secretary be and hereby is directed to pay all expenses properly incurred in the organization of the Corporation, which are listed as follows:

Filing of Articles of Incorporation.....	\$11.00
Rent of Sons of Herman Hall Sept. 14th.....	4.00
Miscellaneous Stationery, Supplies, etc.....	4.80
Refund Initiation Fee to W. S. Clark.....	1.00
Refund Initiation Fee to O. E. Johnson.....	1.00
Total.....	<hr/> \$21.80

Motion was made, seconded, and carried that the following Application for Membership be approved.

*

Membership Application

in

Consolidated Seedsmen's Union? Inc.

I hereby make application for membership in the Consolidated Seedsmen's Union, Inc, and I agree, if accepted as a member, to be bound by the Articles of Incorporation and By-Laws of the Union, and at all times to work for the best interests of the Union and the members thereof, and I hereby designate the Board of Directors of the Union as my exclusive repre-

(Testimony of J. P. Voorhees.)

sentatives as to all matters referred to in the
National Labor Relations Act.

.....
Signature

.....
Address

.....
Telephone

.....
There being no further business, on motion made,
seconded, and carried, the meeting was adjourned.

/s/ DOROTHY TURTON

Secretary

/s/ HAROLD FRAUENBERGER

Chairman

BOARD EXHIBIT 4-D

Copied from the minute book of Consolidated Seeds-
man's Union on April 16, 1941, by Gladys Van
Sickle.

**MINUTES OF MEETING OF
BOARD OF DIRECTORS**

The meeting of the Board of Directors was called
to order by the President, Harold Frauenberger, at
8:10 P. M., on September 28, 1937, at the offices of

(Testimony of J. P. Voorhees.)

Voorhees & Voorhees, 5325 Crenshaw Blvd., Los Angeles, California.

Rollcall showed all Directors present except Morris Stern.

The minutes of the previous meeting were read and approved.

A letter from Dorothy Turton resigning as Treasurer was read, and on motion duly made, seconded and carried, this resignation was accepted.

It was moved by Tom Farley and seconded by D. G. Hatfield that Viola B. Gates be unanimously elected as Financial Secretary and Treasurer. Motion was carried.

It was moved by D. G. Hatfield and seconded by Tom Farley that Blanche L. Eaton and Dorothy Turton be appointed as a committee to assist the Financial Secretary and Treasurer to establish a bookkeeping system for this Union. Motion was carried.

The Treasurer asked if the bank account of this Union might be opened with the Bank of America, Branch at Seventh and Central, Los Angeles, instead of with the Security First National Bank as previously voted. It was moved by Tom Farley and seconded by Harry Fenster that the previous motion relative to the deposit of the funds of this Union in the bank be vacated, and that the funds of this Union be deposited in the Bank of America, Branch at Seventh and Central, Los Angeles. Motion was carried.

(Testimony of J. P. Voorhees.)

It was moved by Blanch L. Eaton and seconded by Harry Fenster that the type of bank account to be opened be left to the discretion of the Treasurer. Motion was carried.

There was considerable discussion regarding the purchase of buttons. It was then moved by Tom Farley and seconded by Harry Fenster that the suggested design as submitted by Harold Frauenberger be approved, new buttons to be secured for each month, the buttons for each month to be a different color. Motion was carried.

It was moved by R. Luck and seconded by D. G. Hatfield that a Corporation Seal, Pocket size, be purchased. Motion was carried.

The Secretary then read applications for membership from the following:

Frank H. Miller	Marguerite L. Bailey	F. A. Wall Jr.
Richard Kadous	Nida Crayton	D. L. Cramsey
Eric G. Hulphers	Thomas Farley	F. A. Wall
Louis Marquez	Thos. G. Harrison	James Neal
R. H. Montgomery	Leonard G. Wade	Roy O. Yoakum
W. A. Epperson	Charles Converse	Paul D. Spence
Harold Frauenberger	Mary Court Harrington	Alfred A. Freeman
Stanley Watson	Minnit T. Sievers	Patrick J. Chavez
K. R. Luck	Harry Fenster	Elizabeth Tarnett
Mae Molyneux	Ramon Magdaleno	Josephine Cook
M. Busching	A. G. Russell	Allan Hook
Cora V. Dempsey	Florence May Siemsen	Mary Ann Miller
Betty Anderson	Daisy Von Zell	Evelyn Smead
Nyda Hansen	Pearl Siemsen	Ruth Dorothy Gray
Emily Nelson	Verna Newman	Marion Y. Otto
Corinne Harger	Dorathy Davis	Mary B. Martinez
Ida New	V. J. Nesbit	Harry B. Orr

(Testimony of J. P. Voorhees.)

Lewis B. Williams	Blanche L. Eaton	E. H. Bishop
A. Coleman	Viola B. Gates	T. Tanabe
Denver Hysell	Myrtle Butterfield	Al Isleib
Amos S. Kays	Dean S. Westfall	C. C. Charles
Erich Regan	Fern A. Wingrove	Ella Saylor
Alice Hook	Edna Hutchinson	Charlotte Miller
D. G. Hatfield	C. L. Van Doren	C. Douglass
Edward G. Casey	A. Stanley Williams	Lucille Poor
A. Vanderveer	John W. Butterfield	Theodore Schrader
Bob J. Kadous	C. C. Fitzgerald	Morris Stearn
Charles F. Hill	Dorothy Turton	

On motion of Harry Fenster, seconded by R. Luck, these eighty-three applications were accepted. Motion was carried.

After considerable discussion, it was moved by R. Luck and seconded by Harry Fenster that membership cards bearing the following words be adopted.

Consolidated Seedsmen's Union, Inc.

Estb. Sept. 17, 1937

Los Angeles, California

This is to certify that.....has been admitted membership to the Consolidated Seedsmen's Union, Inc., and that this member is employed in some phase of the seedsmen's industry.

This card good until revoked.

.....
Secretary

.....
Signature

The motion was carried.

(Testimony of J. P. Voorhees.)

It was moved by R. Luck and seconded by D. G. Hatfield that \$25.00 be paid on account to Voorhees & Voorhees. Motion was carried.

Moved by Tom Farley and seconded by Blanche L. Eaton, that Dorothy Turton and Harold Frauenberger be reimbursed for one meeting each held in their respective homes to the extent of \$2.00 each. Motion was carried.

Moved by Harry Fenster and seconded by Blanche L. Eaton that \$2.00 be paid for each meeting held in a Director's home to the Director for Board Meetings. Motion was carried.

It was moved by Blanche L. Eaton and seconded by R. Luck that the following order of business be followed in all Board of Directors meetings.

Call meeting to order.

Rollcall.

Reading of Minutes of Previous Meeting.

Reports of Committees.

Applications for Membership.

Bills.

Unfinished Business on the Minutes.

Correspondence.

New Business.

Adjournment.

There being no further business to come before this meeting, by motion made, seconded, and carried, the meeting adjourned.

/s/ HAROLD FRAUENBERGER
President

/s/ DOROTHY TURTON
Secretary

(Testimony of J. P. Voorhees.)

BOARD EXHIBIT 4-E

Verified by Gladys Van Sickel on April 17, 1941.

BY-LAWS OF CONSOLIDATED SEEDSMEN'S UNION, INC.

ARTICLE I.

Membership

Applications for membership shall sign an application and agreement to be bound by the Articles of Incorporation and By-Laws, in the form prescribed by the Board of Directors, pay the entrance fee and dues prescribed by the By-Laws, and furnish such information as may be required by the Board of Directors. Such application shall be presented to the Board of Directors and acted upon within thirty (30) days from the time application is first made. During said thirty (30) day period, the Secretary may issue a temporary membership card to the applicant which will entitle applicant to such privileges as the Board of Directors may determine.

ARTICLE II.

Divisions and Departments

For the purpose of holding elections and in order that the members have proper and adequate representation, seven (7) divisions are hereby established. The Board of Directors shall establish as many departments in each division as may be necessary to

(Testimony of J. P. Voorhees.)

provide proper representation. The divisions and departments may be increased or decreased by the Board of Directors from time to time as may be necessary.

The following divisions are hereby established:

Division No. 1.—Traffic

Division No. 2.—Third Floor

Division No. 3.—Fourth, Fifth and Sixth Floors

Division No. 4.—Office

Division No. 5.—Hill Street Store

Division No. 6.—Main Street Store

Division No. 7.—Van Nuys Store

ARTICLE III.

Members of Board of Directors and Department Representatives

One member of the Board of Directors, who must be a member of the division by which he is elected, shall be elected from each division by vote of the members of the division in the manner hereinafter provided.

One Department Representative, who must be a member of the department by which he is elected, shall be elected from each department by vote of the members in said department in the manner hereinafter provided.

The term of office of members of the Board of Directors and Department Representatives shall be one year, unless recalled, or until their successors

(Testimony of J. P. Voorhees.)

shall be elected and qualify. Terms in the respective divisions shall commence on the following dates:

Divisions 1, 3, 5, and 7 on July 1st of each year.

Divisions 2, 4, and 6 on January 1st of each year.

Until their successors shall have been elected and qualify, the following persons shall serve as members of the Board of Directors from their respective divisions:

Division 1.—Harold Frauenberger

Division 2.—Richard Luck

Division 3.—D. G. Hatfield

Division 4.—Blanche L. Eaton

Division 5.—Thomas Farley

Division 6.—Harry Fenster

Division 7.—Morris Stearn

ARTICLE VI.

Nominations and Elections, and Recall

1. Nominations and elections of members of the Board of Directors and Department Representatives shall be by secret ballot. The nominating or primary election in each division and departments thereof shall be held on a day fixed by the Board of Directors which shall be not more than thirty (30) nor less than twenty (20) days before the expiration of the terms of office in said division. The final election in each division and the departments thereof shall be held on a day fixed by the Board of Directors not more than fifteen (15) nor less

(Testimony of J. P. Voorhees.)

than five (5) days before the expiration of terms of office in said division.

2. Prior to the date fixed for the nominating or primary election in each division, the President shall appoint, subject to the approval of the Board of Directors, a committee to conduct the election in said division. The committee shall consist of three (3) members of the Union, none of whom shall be officers of the Union or any subdivision thereof, or members of the division in which the election is to be held. It shall be the duty of the committee to conduct the election, count the ballots, determine the hours during which the voting shall take place, determine eligibility of nominees and certify the name of the successful candidates as duly selected. The Secretary shall furnish to the election committee in each division a complete and accurate list of members in said division entitled to vote and to hold office. The Secretary shall give notice of election not less than five (5) days before the date set for each election by posting on the bulletin boards in the plant or by mail, as directed by the Board of Directors.

3. Special Elections: Special elections shall be held in the same manner as provided herein for regular elections, except that the Board of Directors shall have the power to fix the date of the primary election not less than two (2) days after notice thereof has been given and the date of the final

(Testimony of J. P. Voorhees.)

election not less than two (2) days after the primary election.

4. Manner of Holding Elections: Nominations. During the hours fixed for the primary election each member who is certified by the Secretary to be in good standing shall have the right to receive a blank ballot on which shall appear such information and instructions as may be necessary regarding the elections.

On this ballot the member shall *wire*, or may have written for him by one of the committee, the name of the person the member desires to nominate. Ballots shall be deposited in a locked ballot box, key to which shall be in possession of the Secretary. When the polls are declared closed, the Secretary shall open the box and the committee shall proceed to count the ballots. The two (2) persons eligible for the office receiving the highest number of votes for the office shall be declared nominated as candidates for said office. In the event more than two (2) persons receive the same number of votes, being the highest number, then all persons receiving said number shall be declared nominated. In the event one (1) person receives the highest number of votes and two (2) or more persons receive the second highest number of votes, then all persons receiving said second highest number shall be declared nominated in addition to the person receiving the highest number.

(Testimony of J. P. Voorhees.)

5. Final Elections: During the hours fixed for the final election, each member who is certified by the Secretary to be in good standing, shall have the right to receive a ballot on which shall appear the names of the nominees for each office to be filled, together with such information and instructions as may be necessary. The member may vote for one (1) of the nominees for each office by a cross opposite the name. Ballots shall be deposited in a locked ballot box, key to which shall be in possession of the Secretary. When the polls are declared closed, the Secretary shall open the ballot box and the committee shall proceed to count the ballots. The person eligible for the office, receiving the highest number of votes therefor, shall be declared elected to the office. In the event of a tie vote for any office, the Board of Directors shall, within five (5) days after the election, elect one (1) of the tied nominees to the office.

6. Recall: A referendum and special election shall be held on the question of recall of a member of the Board of Directors on the written request of ten (10) members of his division, or of a Department Representative, on the written request of five (5) members of his department. Upon such referendum and election the vote shall be first upon the question of recall and if affirmative a nominating vote shall be cast for the office on the same ballot. If the recall is carried, then a final election shall

(Testimony of J. P. Voorhees.)

thereafter be held as hereinabove provided. Such referendum and special election shall be held as soon as possible after requested as above set forth and upon such notice as the Board of Directors shall deem reasonable.

ARTICLE V.

Officers and Their Duties

1. Eligibility: Any member of the Union in good standing, who is an American citizen or who has made application for citizenship in the manner provided by law, and who is literate, shall be eligible to hold office in the Union.

2. Officers: The officers of the Union shall be a President, Vice-President, Secretary, Financial Secretary, Treasurer, Outside Guard, Inside Guard, and such other officers as the Assembly may from time to time decide upon.

3. All officers of the Union shall be elected by the Board of Directors at its regular monthly meeting in the month of April of each year and shall serve for one (1) year, or until removed as herein-after provided, or until a successor shall have been elected and is ready to assume the duties of the office.

4. The President shall preside at all meetings of the Union and of the Board of Directors. As the Executive Head of the Union, he shall enforce its By-Laws, rules and regulations, and execute the

(Testimony of J. P. Voorhees.)

will of the Union and of the Board of Directors. He shall appoint, under the direction of, and subject to the approval of the Board of Directors, all committees not otherwise provided for.

5. The Vice-President shall, during the absence or disability of the President, exercise all the powers and discharge all the duties of the President until the President shall resume his duties or his successor be chosen.

6. The Secretary shall keep a complete and accurate record of proceedings at all meetings of the Union and of the Board of Directors. He shall conduct all correspondence under the direction of the President and the Board of Directors, and shall have custody of all correspondence, books, and records; shall keep a membership record; present applications for membership to Board of Directors; shall attest the signature of the President whenever attestation is necessary; and perform such other duties as are usually performed by a Secretary, or as he shall be directed to perform by the Board of Directors or the President; and he shall, upon ceasing to hold office, surrender to his successor in office, when qualified, or to such person as shall be designated by the Board of Directors, all books, papers, and other property of the Union under his control.

7. The Financial Secretary shall receive and give receipts for all monies payable to the Union.

(Testimony of J. P. Voorhees.)

He shall turn the same over to the Treasurer as soon as practicable after receiving the same, obtaining a receipt therefor from the Treasurer. He shall, whenever called upon by the President or other officers, or member of the Board of Directors or Union, render a full and detailed statement of all monies received by him and all monies due and payable to the Union, and if required to do so, the names of members delinquent in their dues or obligations to the Union. The Financial Secretary shall be placed under bond by the Board of Directors to the amount of Five Hundred Dollars (\$500.00). He shall perform such other duties as are usually performed by a Financial Secretary, or as he shall be directed to perform by the Board of Directors or the President. He shall upon ceasing to hold office, surrender to his successor in office, when qualified, or to such person as shall be designated by the Board of Directors, all books, papers, and property of the Union under his control.

S. The Treasurer shall receive and have custody of all monies and securities belonging to the Union under the direction of the Board of Directors and shall deposit the same in such bank or banks as the Board of Directors shall, by resolution, designate. The Treasurer shall be placed under bond by the Board of Directors to the amount of Five Hundred Dollars (\$500.00.). He shall make to the President, Board of Directors and the Union, reports relating

(Testimony of J. P. Voorhees.)

to the affairs of his office and the funds of the Union as often and in such manner as he may be directed, and perform such other duties as are usually performed by a Treasurer, or as he shall be directed to perform by the Board of Directors or the President. He shall, on ceasing to hold office, surrender to his successor in office, when qualified, or to such other person as the Board of Directors may designate, all monies, books, and other property of the Union under his control.

9. Financial Secretary and Treasurer: In the event the offices of Financial Secretary and Treasurer are combined and one person elected thereto, as Financial Secretary and Treasurer, he shall discharge all duties of the Financial Secretary and Treasurer, unless the Board of Directors shall otherwise direct, and such other duties as the President or Board of Directors shall from time to time authorize and direct. The Financial Secretary and Treasurer shall be placed under bond by the Board of Directors to the amount of Five Hundred Dollars (\$500.00). He shall, on ceasing to hold office, surrender to his successor in office when qualified, or to such person as shall be designated by the Board of Directors, all books, papers, and other property of the Union under his control.

10. The Outside Guard shall have charge of the outer door and shall preserve order in the ante-room.

(Testimony of J. P. Voorhees.)

The Inside Guard shall have charge of the inner door; attend all signals; receive and examine membership cards of members, and admit no one without a membership card showing current dues paid, except by direction of the President.

11. Any officer elected by the Board of Directors may be removed from office for neglect or refusal to perform his duties or for misconduct at any regular or special meeting of the Board of Directors. Notice of such contemplated action shall be given to such officer as the Board of Directors may direct. In case of temporary absence or disability of any officer, the position may be filled temporarily by the President or the Board of Directors. If any officer shall cease to be an employee of Germain Seed & Plant Company, the Board of Directors may in its discretion immediately declare his office vacant.

12. A vacancy caused by the death, resignation, or removal of any officer, or by his office being declared vacant as aforesaid, shall be filled for the unexpired term by the Board of Directors.

ARTICLE VI.

Board of Directors: Powers and Duties

1. The Board of Directors, consisting of one (1) member from each division as aforesaid, shall constitute the governing body of the Union. It may expend funds, and in general, do each and every thing or act which it may deem necessary in order

(Testimony of J. P. Voorhees.)

that the purposes, objects, business and affairs of the Union may be properly managed and conducted.

2. The Board of Directors shall hold regular meetings on the first Tuesday of each month for the transaction of all business and all other matters to come before it.

3. Special meetings of the Board of Directors may be called by the President or shall be called by the Secretary at the request of two (2) members of the Board of Directors at any time, and the Secretary shall give reasonable notice thereof to all members of the Board of Directors.

4. The members of the Board of Directors, together with whatever officers of the Union they may designate, shall constitute the Committee of Representation and shall be the exclusive representatives of all the employees of Germain Seed & Plant Company for the purpose of collective bargaining with said Germain Seed & Plant Company in respect to rates of pay, wages, hours of employment or other conditions of employment, but shall not have authority to enter into agreements with said company relative to all such matters without a majority vote of the membership; negotiations and conferences relating to said matters may be carried on by a committee or a representative appointed by the President, with the approval of the Board of Directors, for such purposes.

(Testimony of J. P. Voorhees.)

5. The Board of Directors may make, alter, amend or repeal the By-Laws, subject to the approval of the members of the Union. Any new By-Laws or alteration, amendment or repeal of existing By-Laws must be submitted, and any other matters the Board of Directors deems advisable may be submitted, to a referendum of the members of the Union. The question shall be stated in a form approved by the Board of Directors and may be accompanied by a brief summary of the arguments for and against the proposal. Balloting shall be conducted in the same manner as hereinabove prescribed for elections, by a committee appointed for the purpose, and majority vote of the members shall govern as to all matters so submitted. Any new By-Laws or alteration, amendment, or repeal of existing By-Laws proposed by a member must be submitted to a referendum of the members in the manner set forth above upon the written request of ten (10) members of the Union.

6. The Board of Directors may make such rules and regulations and other provisions for the government of itself, the officers elected by it and the members of the Union not provided for in these By-Laws and not inconsistent with them, as it may deem necessary in order that the purposes, objects, business and affairs of the Union be properly managed and conducted.

7. The Board of Directors shall have direct supervision over all expenditures of the Union. All

(Testimony of J. P. Voorhees.)

expenditures of funds, either by bank check or otherwise, shall be made only upon the signatures of two (2) officers who shall be designated by resolution of the Board of Directors. It shall annually cause all books and accounts to be audited by an auditor of recognized responsibility.

8. In the event of the temporary absence or disability of any Director, the Department Representative from his division shall take his place and discharge his duties and any action of a Department Representative so acting as Director shall have the same force and effect as if done by the Director.

9. If any member of the Board of Directors or Department Representative shall cease to be an employee of the Germain Seed & Plant Company, the Board of Directors may in its discretion immediately declare his office vacant. In the event of such vacancy or the death, disability or resignation of any member of the Board of Directors, the Department Representative of his division shall automatically become Director. In the event of any vacancy in the office of Department Representative, the vacancy shall be filled by appointment by the President of the Union, subject to the approval of the Board of Directors, and the person so appointed shall hold office until the next regular election in his department or division, unless recalled in the manner hereinabove set forth.

(Testimony of J. P. Voorhees.)

10. Quorum: Four (4) members of the Board of Directors, or Department Representatives acting as Directors, shall constitute a quorum for the transaction of all business of the Board of Directors.

11. Voting: Each Director shall be entitled to one (1) vote on any question coming before the Board of Directors. If the presiding officer is not a member of the Board of Directors, he shall not be entitled to vote. A majority vote of any question, proceeding, or matter before the Board of Directors shall govern.

ARTICLE VII.

Grievances and Complaints

Grievances and complaints of any member of the Union shall be submitted to his Department Representative. The Department Representative shall investigate and if in his discretion the matter should be heard, he shall submit it to the Board of Directors at any regular or special meeting thereof and the Board of Directors shall hear and consider the complaint and take such action regarding it as the members shall by majority vote determine. In the event the Department Representative shall fail or refuse to act on any complaints submitted to him, the aggrieved party may carry his grievance to the Director for his division, who shall take such action with regard thereto as he deems advisable.

(Testimony of J. P. Voorhees.)

If the Director shall also fail or refuse to act on the matter, the aggrieved party may present his grievances at any regular meeting of the Board of Directors, and the Board of Directors shall make its determination in the matter and shall take such action as is determined by majority vote.

ARTICLE VIII.

Entrance Fee, Dues, Buttons, Etc.

1. Every person making application for membership shall pay an entrance fee of One Dollar (\$1.00), and if accepted as a member shall thereafter pay monthly dues at the rate of Fifty Cents (\$.50) per month.

2. A membership card and button shall be issued upon his acceptance as a member, which shall be evidence of his membership.

3. First monthly dues shall be due and payable on October 5, 1937, and thereafter dues shall be payable on the first (1st) day of each month. Upon payment of monthly dues, the Financial Secretary shall issue a new button so designated or colored as to distinguish it from buttons issued prior thereto.

4. Any member suspended, expelled or resigning must immediately surrender his membership card and button. It shall be considered an offense subversive of the interests of the Union for any member to give any other person his membership card and

(Testimony of J. P. Voorhees.)

button, or either, or to allow or permit any other person to use it.

5. The Board of Directors may from time to time increase or decrease the amount of the entrance fee and/or dues, and may provide special entrance fee and/or dues for temporary employees of Germain Seed & Plant Company.

ARTICLE IX.

Suspension and Expulsion of Members

1. Any member who shall fail to pay any dues as fixed by the Board of Directors within ten (10) days after the same shall become due shall be automatically suspended until said dues are paid, and shall for the period of suspension forfeit all the rights and privileges of membership in the Union.

2. The Board of Directors may suspend or expel and terminate the membership of any member for conduct which in its opinion disturbs the order, dignity, or harmony, or impairs the good name, popularity or prosperity of the Union, or which is likely, in its opinion, to endanger the welfare, interest, or character of the Union or its members, or for any violation of any By-Laws of the Union or of any rules lawfully made by or under the authority of the Board of Directors or the members of the Union.

(Testimony of J. P. Voorhees.)

ARTICLE X.

Meetings of Members

The President or the Board of Directors may call a general meeting of members of the Union whenever he or they shall deem it advisable and shall give such notice thereof as shall be reasonable in the circumstances. The President shall call a general meeting of the members of the Union upon the written request of ten (10) members of the Union in good standing.

Quorum: Fifteen (15) members of the Union in good standing shall constitute a quorum for the transaction of business at any such meeting.

ARTICLE XI.

Amendments

1. The By-Laws of the Union may be altered, amended, or repealed, or new By-Laws enacted by a majority vote of the members present at a general meeting, provided that written notice of the proposed alteration, amendment, or repeal or new By-Laws shall have been given with the notice of such meeting.

We, the undersigned, do hereby approve and adopt the above and foregoing By-Laws of the Consolidated Seedsmen's Union, Inc.

Dated this 21st day of September, 1937.

(Testimony of J. P. Voorhees.)

Directors

MINNIE SIEVERS, Hill Street
FERN WINGROVE, Office
BETTEY ANDERSON, 3rd Floor
JACK BUTTERFIELD,
4th, 5th, 6th Floor
BILL EPERSON, Shipping
AMOS KAYS, Ranch
STANLEY WATSON, President
ERIC REGAN, Vice-President
VIOLA GATES, Treasurer
HAZEL BROWN, Secretary

Representatives

BILL LOEB
VIOLET ASHLEY
IRENE WALLACE
HARRY HARTLINE
FRANK MILLER
LOUIE FENSTER

Original contained following:

HAROLD FRAUENBERGER
K. R. LUCK
DOROTHY TURTON
WILLIAM S. CLARK
A. HOOK
MORRIS STEARN

(Testimony of J. P. Voorhees.)

Q. (By Mr. Cobey) Do you recall whether or not at any [55] time the Board of Directors of the Consolidated Seedmen's Union consulted with you as to the propriety, that is, the legal propriety or the legality of their submitting to the management a list of those employees at Germain's who were either not members or the Consolidated Seedmen's Union or who were members who were delinquent in their dues?

A. Yes I believe there was some discussion of that sort, and on one occasion when the Board of Directors or the officers came to my office.

Q. Do you recall whether or not you gave a written legal opinion upon that?

A. I cannot recall. I have no independent recollection.

Q. Do you recall whether or not the Board of Directors discussed with you the possibility of their attempting to obtain a closed shop? A. Yes.

Q. Do you recall when this occurred?

A. No, I don't recall the date.

Q. Can you tell us whether or not you were retained to conduct such negotiations?

A. At that particular time, at the time they discussed it with me—I wish we had the dates—it runs in my mind that it was on at least two occasions when the officers of the union discussed with me the question as to whether they should try to obtain a closed shop, and I do not recall being retained [56] for that specific purpose at that time, but recently,

(Testimony of J. P. Voorhees.)

prior to this hearing, I was retained to prepare a contract or the draft of a contract in which there was a paragraph which would constitute a closed shop. I recall advising them that, in my opinion, they should have a closed shop, if they could possibly get it, and that they would have a union that would operate more efficiently and more effectively and cause less disturbance and trouble among the employees if they did have a closed shop, and I recommended to them that they try to secure a closed shop.

Q. Did you take any further steps in that direction, after the preparation of the proposed contract?

A. No, I did not, other than to send a copy of it to the company, and that, as I remember it, was the first that I knew of this hearing, and nothing further was done after that.

Q. Did the company make written reply to your letter enclosing the proposed contract?

A. I don't recall that they did. I think I had a telephone call stating the matter had been referred to their attorney.

Q. I see. Then did you take the matter up with their attorney?

A. Well, at the same time or about the same time I learned of this hearing, and nothing further was done.

Q. Do you recall whether or not you sent that contract to the company around the first of this month? [57]

(Testimony of J. P. Voorhees.)

A. It could be. I don't recall the exact date. I knew that there had been an investigation, but I was under the impression that the investigator was satisfied that this independent union was a valid union, to use that expression, and that the Board was satisfied with this independent union, and for that reason, at the request of the board, I prepared——

Q. You mean at the request of the board of directors?

A. That is correct. (Continuing) ——I prepared this draft of an agreement, and submitted it to the company, and then, as soon as I learned that a complaint had been filed, which was after I sent the agreement to the company, I did nothing further about it. No one has ever notified me of any of these complaints until just very recently. [58]

Mr. Cobey: Mr. Examiner, in lieu of the amendment to the complaint which, by my own consent, I was requested to offer at this time, I should like to state that the Board will consent to the striking from the complaint in paragraph 6 of the following words: Starting on page 4 of the complaint within said paragraph, line 2, starting with the word "by" the words "by attempting" and striking all words up to and including the word "and" in the fourth line of page 4 of the complaint, all of this being within paragraph 6.

Mr. Watkins: Would you kindly read what is stricken?

(Testimony of J. P. Voorhees.)

Mr. Cobey: In other words, what would be stricken would be, "by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the union and."

Trial Examiner Paradise: In other words, the clause, as amended, would read: "through said Meyberg, Schoenfeld, Hill, Nesbit and others by uttering remarks disparaging to said union," and so forth. Is that correct?

Mr. Cobey: Yes.

Mr. Watkins: That doesn't entirely answer, does it, the Examiner's ruling with respect to the bill of particulars, because I thought there was something else in paragraph 6 to be [59] stricken.

Mr. Cobey: Well, it is my recollection that it does.

Trial Examiner Paradise: That would substantially comply with the ruling.

Mr. Watkins: As I understood it, Mr. Examiner, you ruled that paragraph 12 of the motion for a bill was also sustained, and paragraph 12 then would take out of this same paragraph the words—

Trial Examiner Paradise: No.

Mr. Watkins: Or, 11 would take out, "by uttering remarks disparaging to said union and by committing other acts of substantially similar nature and import."

Perhaps I misunderstood the Examiner.

(Testimony of J. P. Voorhees.)

Trial Examiner Paradise: You did not misunderstand. 12 was bracketed with 11, because obviously it refers, with 11, to the substantially similar acts, and so forth, and they are necessarily related to the allegations related in 11. Therefore, the two were bracketed by the Examiner.

I think that the clause now stricken by the Board of its own motion gets to the kernel of the allegation which the Examiner had in mind in referring to both paragraphs 11 and 12 of the motion. Accordingly, I would say that the ruling of the Examiner has been satisfied by the striking of that allegation.

Mr. Watkins: I see. Our exceptions to the Examiner's [60] rulings are automatically noted?

Trial Examiner Paradise: Yes, sir.

Mr. Cobey: Mr. Meyberg.

MANFRED MEYBERG,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and address?

The Witness: Manfred Meyberg; M-a-n-f-r-e-d M-e-y-b-e-r-g; 1041 Copa De Ora Road, West Los Angeles.

(Testimony of Manfred Meyberg.)

Q. (By Mr. Cobey) You are the president of Germain's? A. I am.

Q. How long have you held that position? [61]

A. Oh, approximately fifteen years.

Q. Do you have an employee, that is, does the company have an employee by the name of W. S. Clark? A. Yes.

Q. Was he employed by the company in the fall of 1937, that is, in August and September of 1937?

A. I would say he was. Yes, I think he was.

Q. Do you recall what the nature of his duties were at that time?

A. He had something to do with the nursery.

Q. You don't know what he had to do with it?

A. I think he was—he had charge of the nursery department of the retail store.

Q. Which retail store?

A. At 625 South Hill.

Q. Which has been referred to as the Hill Street store in this proceeding? A. Correct.

Q. Now, calling your attention, Mr. Meyberg, to the period of August and September of 1937, do you happen to know whether or not at that time there was any talk among the employees at Germain's in regard to labor unions?

A. Yes, I did know that.

Q. What is the basis of your knowledge?

A. Well, to go back quite a ways, I have been in the Germain [62] Seed Company for some 37 years, and there are employees around there that

(Testimony of Manfred Meyberg.)

have been there nearly as long as I have, and we have grown up together. Problems of the firm are mutual, and in every organization, you know, there is a lot of gossiping going on, and through gossip, and so forth, I learned about it.

Q. Now, do you recall whether or not during this particular period you called any meeting of your department heads within the warehouse?

A. No, I wouldn't know that. We always have meetings, however, of the department heads, so I might say I might have had meeting at that time.

Q. But you do not recall any particular meeting?

A. No, I do not.

Q. No particular meeting with regard to this situation about the employees talking about unions?

A. Not that I remember.

Q. (By Mr. Cobey) Mr. Meyberg, I hand you for your inspection Board's Exhibit 5, for identification, and I ask you whether or not you have seen it before?

A. Something of that sort. Probably it was the same thing. I have seen a paper of that kind. [63]

Q. When did you see a paper of that nature before?

A. When I copied it, made a copy of a record I had and sent it up here to the Labor Relations Board, and I originally had it and passed it out—had it passed out to employees at a time when I understood there was going to be a meeting of the employees.

(Testimony of Manfred Meyberg.)

Q. I understand then that Board's Exhibit 5, for identification, is a copy which was prepared, under your direction,—— A. Correct.

Q. —of this notice that you distributed to your employees? Is that correct? A. Correct.

Q. Can you tell us about when that distribution of the notice took place?

A. I wouldn't be able to do that, but I can only say it was a time when I understood there was to be a meeting of the employees.

Q. I see.

A. It was during that period. I don't remember exactly the time.

Q. Were you in the court room at the time Mr. Sage and Mr. Voorhees testified? A. Yes.

Q. Do you recall that this notice was distributed during the period of those meetings to which they testified? [64]

A. One of those meetings. Which one, I don't remember.

Q. I see. How was it distributed? Do you recall how it was distributed?

A. I think we handed it out to the employees as they left the building that evening of the meeting.

Q. I see.

A. (Continuing) But I don't remember exactly.

(Testimony of Manfred Meyberg.)

BOARD EXHIBIT 5.

A STATEMENT OF FACTS.

Because of many stories and rumors that are being circulated and believing that those with whom we have worked side by side have confidence in their employers and will welcome comment from time to time on matters of vital interest to our business and our jobs, we wish to say that:

This business believes in the American right of every man and woman to work without coercion, or intimidation of any sort. In support of this principle we believe in the open shop and, in justice to all, we are opposed to any form of closed shop agreement.

You do not have to join any labor union or organization in order to hold your job. The law does not require it. This business does not require it.

You do not have to pay dues, levies, nor any kind of tribute to any organizer or group to hold your job.

You do not have to belong to any organization to get wage increases or enjoy shorter hours. Whenever these benefits are possible they are made to those who do not belong to any organization just the same as to those who do.

You do not have to be a member of any organization. Likewise, you are at liberty to join any lawful organization.

(Testimony of Manfred Meyberg.)

This business takes pride in the high type of its personnel and the friends they have made of thousands of customers.

It is a pleasant relationship that should be continued for the best interests both of employes, and of customers, who after all are our real employers, whether our job happens to be selling, marketing or delivering merchandise, or planning and managing the many activities involved in modern business.

We have steady employment. Our operations are all carried on in a spirit of friendly acquaintance-ship, in close contact with each other and with the public.

There are no inaccessible "bosses". Everyone knows everyone else. We like to feel that we work with, not against, each other. We want to meet each day in that spirit.

GERMAIN SEED & PLANT CO.
MANFRED MEYBERG,
President.

Q. (By Mr. Cobey) Mr. Meyberg, I call to your attention the second paragraph in Board's Exhibit 5. Are you still opposed to the closed shop? [65]

The Witness: Yes.

Q. (By Mr. Cobey) And you have remained continually opposed since that time?

The Witness: Yes. [67]

VIOLA V. GATES,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please, in a loud voice.

The Witness: Viola V. Gates, 7726 Wilcox Avenue, Bell, California.

Q. (By Mr. Cobey) Miss Gates, are you at present employed by Germain's? A. Yes, sir.

Q. How long have you been so employed?

A. Twenty-four years.

Q. What is your present position? [68]

A. Cashier.

Q. Do you know a Mr. Dwight V. Gates?

A. Yes, I do.

Q. Is he employed at Germain's?

A. Yes, sir.

Q. What is his position there?

A. He is superintendent of the warehouse.

Q. How long has he been superintendent of the warehouse?

A. Let me see. I really don't know. I know it has been a number of years, but I don't know.

Q. Would it be as many as ten?

A. Yes, all of that.

Q. Have you ever been a member of any labor organization? A. No, sir.

(Testimony of Viola V. Gates.)

Q. Well, have you ever been a member of the Consolidated Seedsmen's Union?

A. Yes, I am a member.

Q. You are a member now?

A. Yes, sir.

Q. Do you recall when you joined?

A. No, I don't, but I think when it was organized I joined.

Q. Have you ever been an officer of the Consolidated Seedsmen's Organization?

A. I have been the treasurer.

Q. Do you recall when you became treasurer?

[69]

A. I don't remember the date. It was right after it was organized, I was asked to be treasurer.

Q. And have you been treasurer ever since?

A. Yes, sir. [70]

[illegible]

(Testimony of Viola V. Gates.)

Q. (By Mr. Cobey) Now, Miss Gates, I understand that you have been treasurer of the Consolidated Seedsmen's Union practically since its inception? A. Yes, sir.

Q. And as a part of your duties in that office, you have kept the financial records of the Consolidated Seedsmen's Union? A. Yes, sir.

Q. Now, I ask you whether or not you recall whether at any time during your term of office Mr. Meyberg made any contributions or donations to the Union?

A. No, he did not, not to my knowledge, make any donations. [73]

Q. (By Mr. Cobey) Miss Gates, for the purpose of refreshing your recollection, I show you the book of account of the Consolidated Seedsmen's Union, which was obtained from that organization under subpoena and brought to this hearing by yourself, and I call your attention to an entry there in June, 1938. Would you explain that entry?

A. Yes, I will. That was—we had a picnic out at Orange County Park, and everyone was invited to the picnic, and Mr. Meyberg was asked would he give something for the team, the baseball team, and he bought cigarettes for the team, for the winning team.

Q. I see.

A. That is what that item is.

Q. That is what that entry of \$10.00 is about?

A. Yes, sir.

(Testimony of Viola V. Gates.)

Q. Do you know whether or not Mr. Meyberg made any other contributions of that character, in connection with the picnics and the outings of the organization? [74]

A. I don't remember. We had another picnic, but I don't know whether he had anything to do with that or not. I don't remember that.

Q. Could you tell us how the dues are collected for the Consolidated Seedsman's Union?

A. Well, we have representatives in each division, and the books are handed out to the people that have charge of that division, and they are collected through them. The dues are collected through the division representatives.

Q. Then these representatives turn the dues over to you? Is that correct? A. Yes, sir.

Mr. Watkins: When you are speaking of representatives in charge of the division, you mean for the union? Is that it?

Mr. Cobey: Yes, that is right.

The Witness: Yes.

Q. (By Mr. Cobey) When did these representatives ordinarily turn the dues over to you?

A. Well, they have ten days to turn it over to me.

Q. Where do they turn it over to you?

A. Well, sometimes they hand it to me when I am on my lunch hour. I come in at about five minutes to 1:00 and they hand it to me at that time. I usually collected it during the noon hour, when

(Testimony of Viola V. Gates.)

I am on my lunch hour, and they handed it in to me. [75]

Q. Do you recall any occasion when they handed dues to you at any time other than on your lunch hour? A. Well, they might set it on my desk.

Q. Leave it for you?

A. Leave it for me when I am not there, yes.

Q. Do you ever remember any of the representatives bringing dues up to you during working hours?

A. No, I don't know as they do. If they have, it has been very seldom, but I don't—I couldn't state any definite time that they have done that. Sometimes they are turned in at our union meetings.

Q. I see. You have attended the meetings of the Consolidated Seedsmen's Union fairly regularly?

A. Yes, sir.

Q. How is the membership notified of those meetings? A. By a bulletin.

Q. Where is the bulletin posted?

A. On the time clock.

Q. In the warehouse? A. Yes, sir.

Q. I see.

A. Oh, no, not entirely in the warehouse. It was at our different branches.

Q. On the time clock at the various branches?

A. Yes, sir. [76]

Q. As I understand it, just for the sake of clarity, the Consolidated Seedsmen's Union just

(Testimony of Viola V. Gates.)

takes in the employees at the warehouse, and the Hill Street store, and out at Van Nuys? Is that correct? A. That is right.

Mr. Cobey: And no other units of the company's operations are involved in this proceeding? I think that is understood?

Mr. Watkins: Yes.

Q. (By Mr. Cobey) Now, Miss Gates, you were in the court room when Mr. Sage testified?

A. Yes, sir.

Q. Do you recall whether or not you attended any of those meetings?

A. I attended the one at Hill Street.

Q. The one at Hill Street? A. Yes, sir.

Q. Do you have any recollection of what happened at that meeting?

A. Well, just that Mr. Voorhees talked to us, and some other gentleman. I don't know his name.

Q. Would you know his name if it was called to your attention?

A. No, I don't believe I would.

Q. Do you recall anything of what Mr. Voorhees said? [77]

A. Well, he told us how the other—how other places had worked with an independent union, how they were succeeding, and I believe the other man that was there talked on the same subject. If I remember correctly, I think he was from some airport, but I don't know.

Q. Was he from Douglas Aircraft?

(Testimony of Viola V. Gates.)

A. I really don't know.

Q. Do you happen to know whether or not the representatives ever send the dues over to you by company truck?

A. Not that I know of, that——

Trial Examiner Paradise: Did you say "by company check"?

Mr. Cobey: Company truck. I am sorry.

The Witness: They do. I believe our Van Nuys dues come in by company truck, that the member brings it himself.

Q. (By Mr. Cobey) Is that Amos Kays?

A. No, Robert Montgomery.

Trial Examiner Paradise: Will you explain what you mean? You don't mean, counsel, do you, that the money is transported by company truck in the sense that an armored truck would deliver a payroll?

Mr. Cobey: No. I don't think it is that much.

Trial Examiner Paradise: You mean that the man that collects the money or delivers the money works on the truck?

The Witness: The man that delivers the money works on [78] the truck.

Trial Examiner Paradise: Is he a representative?

The Witness: He is a union member and takes it from the representative at Van Nuys.

Q. (By Mr. Cobey) And he merely uses that transportation to come in?

(Testimony of Viola V. Gates.)

A. Yes. He comes in every morning.

Mr. Watkins: He comes in on normal business?

The Witness: Yes.

Mr. Cobey: That is all.

Mr. Watkins: I have no questions.

Trial Examiner Paradise: You may step down.

(Witness excused.)

Mr. Cobey: Mr. Hulphers.

ERIC G. HULPHERS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address in a loud voice, please.

The Witness: Eric G. Hulphers, E-r-i-c G. H-u-l-p-h-e-r-s; 3153 West 110th Street, Inglewood.

Q. (By Mr. Cobey) Mr. Hulphers, do you work at Germain's? A. Yes, sir. [79]

Q. What do you do down there?

A. I am clerk over particular supplies and insecticides now, order clerk.

Q. Is that in the warehouse? A. Yes, sir.

Q. What floor? A. Fourth floor.

Q. How long have you worked for the company?

A. Over four years.

(Testimony of Eric G. Hulphers.)

Q. Would you tell us the positions that you have held since you have been in the employ of the company?

A. I was freight elevator operator, which includes the gathering up of mail and running errands and doing general work, some general work in the shipping department and throughout the building.

Q. How long were you freight elevator operator?

A. Three years.

Q. For three years? A. Yes, sir.

Q. Under whose supervision did you work?

A. Mr. Hill, W. E. Hill.

Q. Then did you go up to your present job?

A. No. I was—I went down on the shipping floor.

Q. You worked on the shipping floor?

A. Yes, sir. [80]

Q. General labor?

A. For a while. Then I went up to the fourth floor and worked for a little while, and I broke in up there for several months. I worked half days and broke in, and in all the spare time I could get I broke in learning the business.

Q. How much time did you spend on the shipping floor?

A. Oh, off and on a few hours a day, or a half a day, or such.

Q. I mean, when you were working down there, how long did you work there?

(Testimony of Eric G. Hulphers.)

A. Oh, the first period I don't know exactly, but I worked on four—I worked on the elevator from January, 1937 until January, 1940. Then do you want me to proceed?

Q. Yes.

A. Then I went down on the shipping floor for about a month.

Q. Then after that you were broken in?

A. Then after that I went directly to the fourth floor and worked up there because I knew that stock already.

Q. I see. That has been your complete employment experience?

A. No; no. I worked on the fourth floor until August.

Q. August, 1940?

A. Yes, sir. Then I went to the bull gang, general labor, until October, 1940, and at that time I went on the shipping floor, and I stayed on the shipping floor then until January, 1941. Then I went to the fourth floor and I have been on [81] there again up until now.

Q. Under whom do you work at the present time?

A. Under Mr. Nesbit, and he works under Mr. Hill. He is the floor supervisor.

Q. Do you happen to know whether or not there has been more than one Mr. Nesbit employed down at Germain's for the last four years?

(Testimony of Eric G. Hulphers.)

A. I never had knowledge of another Mr. Nesbit being employed down there.

Q. There has only been one Mr. Nesbit?

A. This is Mr. Vivian Nesbit.

Q. I see. When you were employed on the bull gang, under whom did you work?

A. Mr. Gates.

Q. And when you were employed on the shipping floor you worked under Mr. Hill? Is that right?

A. Mr. Hill.

Q. I see. Do you know Mr. Harold Frauenberger?

A. Yes, sir.

Q. Can you tell me whether or not he is employed at Germain's?

A. Yes, sir.

Q. Was he employed there in August and September of 1937?

A. Yes, sir. [82]

Q. (By Mr. Cobey) Have you worked with Mr. Frauenberger?

A. Yes.

Q. When did you work with him?

A. On the shipping floor for one month.

Q. On the shipping floor for one month?

A. In 1940.

Q. What were his duties at that time?

A. City dispatcher.

Q. City dispatcher?

A. Over all the trucks, to my knowledge.

Q. How many trucks do you have?

A. About four.

Q. Do you know Mr. Allan Hook?

A. Yes, sir.

(Testimony of Eric G. Hulphers.)

Q. Have you ever worked with him?

A. Yes, sir.

Q. When did you work with him?

A. I was under him when I was on the bull gang. He was, well, we call him straw boss. What the terms are, I don't know. He relayed all the orders of the day to us.

Mr. Watkins: Just a minute. I object to that as call- [83] ing for a conclusion of the witness and also being hearsay evidence, and not the best testimony as to what duties these men performed. I move that the answer be stricken.

Mr. Cobey: I think in view of the fact that this witness has worked with Mr. Hook, he can testify as to the duties of Mr. Hook during the period during which he worked with Mr. Hook.

Mr. Watkins: I suggest, Mr. Examiner, that the witness' own statement tells what he has done. He was an operator of the elevator for four years, and he has been shifted from pillar to post, and these particular people we are discussing have been subpoenaed and can tell us of the duties they have performed.

Trial Examiner Paradise: I think the witness can tell us as to what his observation was. The objection is overruled.

Is there any question pending?

(The last question and answer read.)

Mr. Watkins: I believe I moved to strike that answer, Mr. Examiner.

(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: The motion is denied.

Q. (By Mr. Cobey) Do you know Mr. D. G. Hatfield? A. Yes, sir.

Q. Have you ever worked with him at all?

A. A few days at a time; several times is all.

[84]

BOARD EXHIBIT 7

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Anderson, Betty (Mrs.)	Director	2	1-1-40 to 1-1-41
Ashley, Violet	Secretary		2-9-38 to 11-1-38
“ “	Representative	4	8-9-38 to 1-1-41
Bettis, Betty	Representative	5&6	3-5-41 to
	Secretary		4-1-41 to
Brown, Hazel	Secretary		4-2-40 to 10-1-40
Butterfield, J. W.	President		9-23-40 to 4-1-41
Butterfield, Myrtle	Representative	4	1-1-38 to 8-9-38
“ “	Secretary		6-7-38 to 7-5-38
“ “	Director	4	1-1-41 to
Clark, Wm. S.	Formational Committee & Incorporator		
“ “ “	Director	6	9-20-37 to 9-20-37
Crayton, Nyda	Representative	2	1-1-38 to 1-1-39
Durand, Ethel (Mrs.)	Representative	5&6	1-1-41 to 3-5-41
“ “	Director	5&6	3-5-41 to
Eaton, Blanche L.	Director	4	9-20-37 to 11-2-37
“ “	Secretary		11-1-38 to 4-4-39
Epperson, Wm. A.	Representative	1	7-1-38 to 7-1-39
“ “	Director	1	7-1-39 to
Farley, Thomas	Director	5	9-20-37 to 2-7-39
“ “	Vice-President		9-20-37 to 4-5-38
“ “	Director	5&6	1-1-40 to 3-5-40

(Testimony of Eric G. Hulphers.)

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Fenster, Harry	Director	6	9-20-37 to 11-1-38
“ “	“	5&6	2-7-39 to 1-1-40
Fenster, Louis	Representative	7	5-6-40 to
Fielding, Theo	Vice-President		11-6-40 to
Frauenberger, H.	Formational Committee & Incorporator		
“ “	President		9-20-37 to 4-5-38
“ “	Director	1	9-20-37 to 7-1-38
Gates, Viola B.	Financial Secretary & Treasurer		9-28-37 to
Harger, Corinne	Director	2	1-1-39 to 2-7-39
“ “	Representative	2	2-7-39 to 1-1-40
Harrison, Thos. G.	Representative	5	9-20-37 to 7-1-38
Hartline, Harry	Representative	3	7-1-39 to 7-1-40
Hatfield, D. G.	Director	3	9-20-37 to 7-1-38
Hook, Allen	Formational Committee & Incorporator		
	Representative		9-20-37 to 7-1-38
“ “	Director	3	9-20-37 to 9-20-37
“ “	“	“	7-1-40 to
“ “	President		4-1-41 to
Hysell, Denver	Representative	7	9-20-37 to 7-1-39
Kadous, Richard	President		4-4-39 to 2-6-40
“ “	Director	1	7-1-38 to 7-1-39
“ “	Representative	1	7-1-39 to 3-5-40
Kays, Amos	Director	7	7-1-38 to
Luck, Richard	Formational Committee & Incorporator		
“ “	Director	2	9-20-37 to 1-1-39
“ “	President		4-5-38 to 4-4-39
“ “	Secretary		4-4-39 to 4-2-40
“ “	Director	2	11-7-39 to 1-1-40
Lyman, Wm.	Inside Guard		11-9-37 to
Lilly, Emily	Representative	3	7-1-40 to
Loeb, Wm.	Representative	5&6	5-6-40 to 1-1-41

(Testimony of Eric G. Hulphers.)

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Marquez, Louis	Outside guard		11-2-37 to
Martinez, Mary	Representative	6	9-20-37 to 11-1-38
Miller, Ann (Miss)	Representative	2	1-1-41 to
Miller, Frank	Representative	1	3-5-40 to
Nesbitt, Vivian J.	Director	3	7-1-38 to 7-1-39
Orr, Harry B.	Formational Committee & Incorporator		
	Director	5	9-20-37 to 9-20-37
Otto, Marion	Representative	3	7-1-38 to 7-1-39
Porter, E. J.	Representative	5	7-1-38 to 2-7-39
“ “ “	Director	5&6	3-5-40 to 3-5-41
Regan, Erich	Vice-President		4-5-38 to 11-6-40
Roberts, Florence	Representative	2	1-1-39 to 2-7-39
“ “	Director	2	2-7-39 to 7-12-39
Rowe, Ora	Representative	7	7-1-39 to 5-6-40
Sevaldsen, Karl	Director	2	7-12-39 to 11-7-39
Siemens, Florence	Representative	2	9-20-37 to 1-1-38
Sievers, Minnie T.	Representative	6	9-20-37 to 11-1-38
“ “ “	“	5&6	2-7-39 to 1-1-40
Slee, Ruth	Secretary		11-6-40 to 4-1-41
Smotrys, Mrs. M.	Representative	4	1-1-41 to
Stearn, Morris	Formational Committee & Incorporator		
“ “	Director		9-20-37 to 7-1-38
Swain, L.	Representative	5&6	1-1-40 to 5-6-40
Tabor, Howard	Representative	1	7-1-40 to ?
Turton, Dorothy	Formational Committee & Incorporator		
“ “	Financial Secretary		
	& Treasurer		9-20-37 to 9-20-37
“ “	Secretary		9-20-37 to 6-7-38
“ “	Director	4	9-20-37 to 9-20-37
	Representative	4	9-20-37 to 1-1-38

(Testimony of Eric G. Hulphers.)

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Wall, Francis A., Jr.	Director	6	11-1-38 to 2-7-39
“ “ “ “	“	3	7-1-39 to 7-1-40
Wallace, Irene (Miss)	Representative	2	1-1-40 to 1-1-41
“ “	Director	2	1-1-41 to
Watson, Stanley	President		2-6-40 to 9-23-40
	Representative	1	9-20-37 to 7-1-38
Wingrove, Forna	Director	4	11-2-37 to 1-1-41

RICHARD F. KADOUS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address in a loud voice, please.

The Witness: Richard F. Kadous, K-a-d-o-u-s; 1241 East 89th Street.

Q. (By Mr. Cobey) Mr. Kadous, were you at any time employ- [86] ed by Germain's?

A. Yes, I was.

Q. What was the period of your employment?

A. I started to work for Germain Seed in September of 1936 and worked for them until January of 1940.

Q. What did you do while you were there?

A. Well, I first worked for Mr. Gates on the bull gang, and I can't recall exactly how long, I

(Testimony of Richard F. Kadous.)

think it was about until in January of 1937, and then I worked for Mr. Hill from then on.

Q. In the shipping department? A. Yes.

Q. What were your duties?

A. I was assistant to the City Shipping Clerk.

Q. Who was that?

A. Mr. Frauenberger.

Trial Examiner Paradise: What was that name?

The Witness: Mr. Harold Frauenberger.

Q. (By Mr. Cobey) What did you observe Mr. Frauenberger do [87] when you were working as his assistant?

The Witness: Well, he took—had charge of the deliveries of the city division, of shipping, and he routed all the bills for the truck drivers.

Q. (By Mr. Cobey) Did you ever observe Mr. Frauenberger relay any orders of Mr. Hill to the truck drivers? A. No, I did not.

Q. Did Mr. Frauenberger ever take the place of Mr. Hill in Mr. Hill's absence? [88]

A. I am quite sure if Mr. Hill was absent that Mr. Frauenberger filled in. I wouldn't say he would take his place, but he did the duties that Mr. Hill ordinarily would do, to some extent. Of course, he couldn't do all the things Mr. Hill did.

Mr. Watkins: Just a minute. I move to strike the portion of the witness' answer to the effect that Mr. Frauenberger did the duties of Mr. Hill, as being a conclusion.

(Testimony of Richard F. Kadous.)

Trial Examiner Paradise: The motion is denied.

Q. (By Mr. Cobey) Mr. Kadous, were you ever a member of the Consolidated Seedsmen's Union? A. Yes, I was.

Q. Will you state the period of your membership?

A. Well, I was a member since its beginning, and then until I left the employment of the German Seed and Plant Company.

Q. Were you ever an officer of the Consolidated Seedsmen's Union? A. Yes, I was.

Q. What offices did you hold?

A. Well, I was on the Board of Directors for a while, and I was head of the—representative of the shipping department, and then I was also president of the union.

Q. Mr. Kadous, I hand you Board's Exhibit 7, and I call attention to your name there in the officers and to the terms of office opposite your name. To the best of your recollection, [89] is that a correct statement? A. That is correct.

Q. Mr. Kadous, you were in the court room when Mr. Sage testified? A. Yes, I was.

Q. Do you recall any of those meetings as to which he testified? A. Yes, I do.

Q. Were you present at those meetings?

A. Yes.

Q. Let's take the first meeting at which Mr. Sage spoke. Do you remember anything as to what he said?

(Testimony of Richard F. Kadous.)

A. Well, I remember that we had a meeting on the shipping floor amongst the employees. There were mostly men present, and Mr. Sage addressing the group, and he asked—spoke in regard to forming a union, and he brought up, well, the organization that they used to have there, and he thought it would be a very fine thing if we could form something of that order at this time, and as far as I could see, most of them agreed with him.

Q. Were you at the second meeting, at which Mr. Voorhees spoke? A. Yes, I was.

Q. Do you remember what Mr. Voorhees said?

A. Well, he merely pointed out that there were different in- [90] dependent unions around town, and how they were working, and that was mostly the extent of his conversation.

Q. Do you recall whether or not Mr. Hill and Mr. Gates were present at those meetings?

A. They were present at the beginning of one of the—the second meeting, until they were dismissed.

Q. Did you attend the meeting in the Hill Street store? A. Yes, I did.

Q. Do you recall as to what happened at that meeting?

A. Well, Mr. Voorhees was there, and there was also a man there from Douglas, but I don't recall his name, and he spoke on the independent unions.

Q. Would you recognize his name if you heard it? A. I don't think I would.

(Testimony of Richard F. Kadous.)

Q. It wasn't Michael Fanning, was it?

A. I am not sure. I wouldn't say for sure. I just know he was from Douglas.

Q. Who presided at that meeting at the Hill Street store?

A. I think Mr. Sage introduced Mr. Voorhees, and then from there on Mr. Voorhees introduced the other speaker from Douglas, and Mr. Voorhees was the man that presided over the entire meeting.

Q. Do you recall whether or not any election was held at the plant during this period?

A. Yes, I recall an election that was held in regard to what [91] union to form, but I can't remember whether it was held after——

Mr. Cobey: Will you mark this Board's Exhibit 8, for identification.

(The document was marked as Board's Exhibit 8, for identification.)

Trial Examiner Paradise: Had you completed your answer, Mr. Kadous?

The Witness: No, I haven't.

Trial Examiner Paradise: Complete it, please.

The Witness: I think the election was held between the meeting that Mr. Voorhees presided at in the warehouse and the meeting that we had at the Hill Street store.

Q. (By Mr. Cobey) Now, Mr. Kadous, I hand you Board's Exhibit 8, for identification. Have you ever seen such a document before?

(Testimony of Richard F. Kadous.)

(Handing document to witness.)

A. Yes, I have.

Q. Would you state the circumstances under which you saw such a document?

A. They were the ballots that were used in the election as to the choice of the union.

Q. As to this election as to which you have just testified?

A. Yes.

Q. You have testified that this election occurred between the second meeting at the warehouse and the meeting at the Hill Street store, to the best of your recollection? [92]

A. I am not positive about that, but I think it did.

BOARD EXHIBIT 8

C. I. O. ☐

A. F. of L. ☐

Independent ☐

Have Mr. Meyberg talk to us..... ☐

Q. (By Trial Examiner Paradise) With respect to the time when this was used, you say it was between which meetings?

A. Between the second meeting that—well, between the second meeting at the warehouse——

Q. Is that the one that Mr. Voorhees held?

(Testimony of Richard F. Kadous.)

A. Yes, that was the first meeting at which Mr. Voorhees spoke, and I think the other meeting was at the Hill Street store about three weeks later, and we had held an election between that time.

Q. You say you had held an election between that time. Do you mean you held an election in which you used these ballots which have been marked Board's Exhibit 8, for identification?

A. Yes, sir.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Can you tell us how that election was held? [93]

A. The ballot boxes were placed in the different divisions or the different departments, such as the third floor, the fourth floor, the shipping department and the Hill Street and Van Nuys Ranch.

Q. Who placed the ballot boxes?

A. I wouldn't know exactly. I wouldn't be able to answer that question.

Q. Do you know who arranged the details of the election?

A. I am quite sure Mr. Frauenberger did.

Q. That is Mr. Harold Frauenberger?

A. Yes.

Trial Examiner Paradise: Mr. who?

The Witness: Mr. Harold Frauenberger.

Q. (By Mr. Cobey) Now, what time of day did this balloting take place?

A. I think the ballot boxes were placed, well, on

(Testimony of Richard F. Kadous.)

one of the days, and that everybody voted as they found time to vote.

Q. The ballot boxes in the warehouse were just placed on the various floors? A. Yes.

Q. And one at the store and one at the ranch? A. Yes.

Q. And the employees came up as they found time to vote? A. Yes.

Q. Now, these ballots were thereafter counted? [94]

A. They were what?

Q. Counted? A. Yes, they were counted.

Q. Do you recall whether or not you assisted in the counting?

A. Yes, I did. I assisted in the counting.

Q. Where did that counting take place?

A. The counting took place in the—it took place just about the shipping floor, in the hot cap department.

Q. In the hot cap department?

A. Yes, sir.

Q. Do you happen to know who printed up Board's Exhibit 8?

A. Was that the ballot?

Q. That was the ballot. Who prepared that?

A. I wouldn't be able to say. That I wouldn't know.

Mr. Cobey: Mark this as Board's Exhibit 9, for identification, please.

(Testimony of Richard F. Kadous.)

(The document referred to was marked as Board's Exhibit 9, for identification.)

Q. (By Mr. Cobey) Now, Mr. Kadous, I hand you Board's Exhibit 9, for identification. Do you recognize that document?

(Handing document to witness.)

A. Yes, I do.

Q. Does that represent a tabulation of the votes in this election as to which you have just been testifying? [95]

A. That is correct.

Q. As I understand it, each of the names of persons appearing on Board's Exhibit 9, for identification, is the name of a person who was at that time employed by Germain's?

A. Yes, that is correct.

Q. Do you know at what time of day this counting was done?

A. It was done during the lunch hour.

Q. Do you happen to know how the results were made known to the employees?

A. Well, I think they were made known by just word of mouth more or less.

Q. In other words, those who counted the ballots then went around and told the employees?

A. Yes.

Q. As to what the results were?

A. Yes.

[96]

(Testimony of Richard F. Kadous.)

BOARD EXHIBIT 9.

	Total
C. I. O.	3
A. F. L.	33
Ind. Union	45
Meyberg	11
Spoiled Ballots	10
	<hr/>
Total	102

Counted By

W. S. Clark

Martinez

Richard Kadous

James Neal

V. J. Nesbit

Watson

L. H. Miller.

Q. (By Mr. Cobey) Do you happen to know how that tabulation committee was selected?

A. I don't recall how they were selected, no.

Trial Examiner Paradise: How were you selected?

The Witness: How was that?

Trial Examiner Paradise: How were you selected?

The Witness: If I remember right, at the meeting at the Hill Street store—no, it couldn't have

(Testimony of Richard F. Kadous.)

been at that meeting. I think they were just appointed at random by the—well, in fact, I think there was one person from each division on the counting, and they were appointed, if I am not mistaken, by Mr. Frauenberger.

Trial Examiner Paradise: Who told you that you were going to be on this committee to count the ballots?

The Witness: I don't think I could answer that correctly. I don't remember. [97]

Q. How was the membership notified of the meetings of the Consolidated Seedsmen's Union?

A. They were posted at the time clocks of the different stores, like the Ranch, the Hill Street and in the warehouse.

Q. Now, when you were a representative of the Consolidated Seedsmen's Union, Mr. Kadous, how did you collect dues for that organization?

A. Well, I did—I only had about five people to collect from, and it is very simple to collect dues from five people, and I generally approached them whenever I felt I had a few minutes time.

Q. That was on the job?

A. I don't think I paid any particular attention to the time when I did it.

Q. Just when they had a spare moment and you had a spare moment?

A. And if I was anywhere near the fellows that owed the dues, I would approach them about it.

[98]

(Testimony of Richard F. Kadous.)

Q. (By Mr. Cobey) What was the average attendance at the meetings when you were president?

A. Oh, I should judge it was around 25, or that.

Q. Did you or did you not have any difficulty in maintaining attendance? A. Yes, sir.

Mr. Watkins: Just a minute. I object to that as being incompetent, irrelevant and immaterial, and also calling for a conclusion of the witness, not being the best evidence when the books and records are available.

Trial Examiner Paradise: Overruled. [99]

Q. Mr. Kadous, I call your attention to the fact that Board's Exhibit 10, for identification, relates to the preferential employment of union members. Was that an established policy of the Consolidated Seedsmen's Union?

A. Yes. It was the policy to try to get the union members to work before the others—before anyone else was hired.

Q. How was that worked out?

A. Well, merely by the order of this list that we gave to Mr. Meyberg every month, in regard to union members that were unemployed. [101]

Q. (By Mr. Cobey) Did your list of unemployed members include only those that were in good standing, or delinquents as well?

The Witness: It included the names of all the union members.

Q. (By Mr. Cobey) The names of all of the union members?

(Testimony of Richard F. Kadous.)

A. Whether they were paid up or whether they weren't paid up.

Q. When you were president, this was a regular practice, to submit this list each month to Mr. Meyberg?

A. Yes, sir.

Q. During your term of office did union members secure preference in employment?

A. Yes, in most cases they did.

Q. In most cases they did? A. Yes.

Q. Mr. Kadous, do you recall whether or not any meetings of board of directors during your term in office were held down at the warehouse?

A. No, we had no meetings in the warehouse at all.

Q. No meetings of either the board of directors or of the membership?

A. No meetings whatsoever. [102]

(Testimony of Richard F. Kadous.)

BOARD EXHIBIT 10.

CONSOLIDATED SEEDSMEN'S UNION

Sept. 13, 1939

Dear Mr. Meyberg:

As is our custom to inform you about our members who are not working at the present time; we wish to submit the following list of names:

Miss Sue Busick

“ Hazel Brown

“ Eva Kevan

“ Allie Conrad

“ Mildred Bruce

“ Virginia Bland

“ Irma Wright

Mr. Robert Kadous

These members are usually employed in the office or on the third floor and are used, when possible, on the radio work. At the last meeting of the Board of Directors the fact, that there are other people working in these Departments who are not members, came to light.

Thank you for your cooperation in this connection.

Yours truly,

CONSOLIDATED SEEDSMEN
UNION INC.

R. KADOUS,

Pres.

KRL/K

(Testimony of Richard F. Kadous.)

Q. I think if you will inspect the by-laws you will find that the directors run from July to July and the officers from [103] April to April. But you don't recall having ever attended any directors' meetings at the warehouse?

A. I know we had directors' meetings, but I didn't think I was president at the time.

Q. But did you attend any meetings, whether you were president or director, that were held in the warehouse? A. Yes, I did.

Q. You did? A. Yes.

Q. Do you recall when those meetings occurred?

A. No, I don't. I don't think I could answer that question as to the time.

Q. I call to your attention by showing you the minute book a meeting of the directors held on June 14, 1939, which was held, according to the minutes, at the warehouse. Do you recall whether or not you attended that meeting? [104]

The Witness: I don't recall attending that particular meeting, but evidently my signature is on the minutes, and so then I must have attended the meeting.

Q. (By Mr. Cobey) Now, during your term as president, did the Consolidated Seedsmen's Union ever request from the management a written contract? A. No, we did not.

Q. During your term of office did the management accede to all of your demands?

(Testimony of Richard F. Kadous.)

Trial Examiner Paradise: Do you understand the question?

The Witness: Yes, I do understand the question, but you will have to give me time to think, because these things happened so long ago that I don't recall right offhand.

Mr. Watkins: May I interpose an objection at this time, and again urge the objection I have made to similar previous questions. It is my rather positive recollection that the matters Mr. Cobey now is inquiring about are in the minutes of the union, and it would seem to me that that would be the quickest and most satisfactory way to get at these questions, and they are the best evidence rather than hearsay testimony. [105]

Trial Examiner Paradise: Are there minutes of the meetings between the union representatives and the company?

Mr. Cobey: There are minutes of certain meetings. I am not aware of whether they are all of the meetings or not. It so happens there are no minutes of meetings between the representatives of the union and the company during the term Mr. Kadous was president of the union.

Trial Examiner Paradise: The objection is overruled. Suppose you put a preliminary question to the witness then, Mr. Cobey. You might ask: Did your union present any demands to the company during your term of office as president?

(Testimony of Richard F. Kadous.)

The Witness: No I don't think so. I am not positive, but I am quite sure that I did not.

Mr. Cobey: That is all.

Mr. Watkins: Just a minute, please.

Cross Examination

Q. (By Mr. Watkins) Mr. Kadous, you were referring to the question of preferential hiring or preference for your union members. The Consolidated Seedsmen's Union had only as members employees of Germain's; is that correct?

A. That is correct.

Q. In other words, the only ones to whom preference would apply then would be former employees of Germain's?

A. That is right.

Q. Board's Exhibit 10 is the letter from the union, I believe, [106] to Mr. Meyberg, requesting that unemployed union members, meaning Consolidated Union members be employed instead of non-union members. Had you prior to that time had some difficulty with the company because of its employment of people who were not members of the Consolidated Seedsmen's Union?

A. Not that I recall right offhand, but I think the idea of the list was more or less to, well, to make a feeling amongst the union members that we, at least, were trying to prefer their being hired back than non-union members, in order to get them something that—some reason or otherwise—so that

(Testimony of Richard F. Kadous.)

they might have some incentive to belong to the union.

Q. (By Mr. Watkins) While you were either a director or an officer of the Consolidated, did you have discussions with your members or with your other officers or directors concerning the question of employment by Germain's of only Consolidated Seeds- [107] men's Union's members.

A. Yes, we did.

Q. And have you had that question up a number of times? A. Yes.

Q. Haven't you also had the question of the company's employing outside people when there were unemployed members of your union?

A. Yes.

Q. And you had that up numerous times, did you not? A. Yes.

Q. And took it up with Mr. Meyberg on occasion? A. Yes.

Q. Is it not a fact, Mr. Kadous, that that was one of the matters which brought on the discussion of the question of the closed shop ultimately for your union?

A. Well, I haven't been employed there lately, and I don't think that we ever, that I can recall, tried to get a closed shop while I was an officer of the union.

Q. That came subsequently then to your time in office? A. Yes.

Q. And to your time of employment?

(Testimony of Richard F. Kadous.)

A. Yes.

Q. Now, going back to this election that was held some time between the Voorhees meeting at the plant and the Voorhees meeting at the Hill Street store, who suggested that such an [108] election be held?

A. Well, the majority of the employees working there suggested that we had to have some kind of an election, and we decided that was the way to have it to come to the proper conclusion to which union we was to have.

Q. Was that discussed, that is, the holding of that election with anybody from the management?

A. No, I would say no, it was not.

Q. The employees among themselves decided on that course?

A. Yes.

Q. Was any permission obtained from the management to put the ballot boxes at your places of work?

A. No.

Q. Who determined how the ballots should read, and that the names or the order appear in the order they are? When I am speaking of the ballots, I am referring to Board's Exhibit 8. What I am getting at is: On that ballot you will find the C. I. O. first, the A. F. of L. next, and then "Independent." Who determined that that order of names be put on the ballot?

A. I wouldn't say exactly, but I think that Mr. Frauenberger at that time was taking the matter in hand more or less, and, after all, there had to

(Testimony of Richard F. Kadous.)

be someone to, well, to make the move one way or the other, and I think Mr. Frauenberger took it—gave his suggestion how the ballots were to be made, and the different employees agreed onto it, as to the ballots. [109]

Mr. Watkins: I think that is all.

Redirect Examination

Q. (By Mr. Cobey) Mr. Kadous, in regard to that same election, I think you just testified that the idea of an election was suggested by the majority of the employees. How was such a suggestion made?

A. Well, I think at the meeting, at the second meeting in the warehouse, I am quite sure that we agreed to have an election of some kind among the employees, and there were about 25 or 20 employees there at that time.

Q. Do you recall whether or not Mr. Voorhees, in the course of his remarks at that meeting, said that to make it legal an election should be held?

A. I couldn't recall that remark.

Q. But you remember that at that second meeting there was a discussion as to whether or not an election should be held?

A. Yes.

Q. And you say that Mr. Frauenberger was the moving spirit thereafter in holding the election?

A. Yes. That is, after Mr. Sage dropped out, why, Mr. Frauenberger took over.

Q. During the period of these meetings did you personally observe any of the employees, such as

(Testimony of Richard F. Kadous.)

Mr. Frauenberger, go around the warehouse and engage in conversations with respect to the so-called independent union? [110]

Mr. Watkins: Just a minute. I object to the question as being highly leading and suggestive.

Mr. Cobey: I will rephrase it.

Q. (By Mr. Cobey) What campaigning for the so-called independent union did you observe, if any?

Mr. Watkins: Just a minute. I object to that as calling for a conclusion of the witness: What campaigning was conducted?

Trial Examiner Paradise: Overruled.

The Witness: Well, I think I would probably be in a position to know, and I think you are referring to Mr. Frauenberger, or anybody in particular, and I would more or less know whether Mr. Frauenberger did, because I worked with Mr. Frauenberger, and being I worked with him that, therefore, I would know, and I will say he did not approach me in regard to any unionism whatsoever.

Q. (By Mr. Cobey) And you did not observe him approaching anybody else?

A. No, I did not.

Q. I think in regard to this election you testified the ballot boxes were left one day and the employees given the opportunity to vote, and they were picked up and counted the next. Is that correct?

A. Yes.

Mr. Cobey: That is all. [111]

Mr. Watkins: No further questions.

Trial Examiner Paradise: Just a moment, please.

(Testimony of Richard F. Kadous.)

There are a couple of things about this election I still don't understand.

Q. (By Trial Examiner Paradise) Do you know who printed the ballots?

A. I do not know who printed the ballots.

Q. You testified that Mr. Frauenberger took the suggestion of the employees as to the organizations that would appear on the ballot. Do you remember that testimony? A. Yes.

Q. That is, the order in which they were to appear, you said the employees agreed to that?

A. Yes.

Q. Now, was there a meeting at which that was discussed?

A. No. I don't think there was a meeting. It was discussed at the second meeting in the sense that when Mr. Voorhees was there we decided to hold an election shortly after that.

Q. What was discussed at that meeting in regard to an election, so far as you can recall?

A. Well, it was just discussed that we were to have an election and what was to be on the ballot.

Q. Whose suggestion was it that you have an election?

A. I don't recall who had suggested it, but it is generally [112] the procedure that in cases of these kinds that the employees—some of them were in favor of different unions, why, in order to have them all agree, why, we decided we had to have an election so that everybody could voice themselves in regard to what union they wanted.

(Testimony of **Richard F. Kadous.**)

Q. Now, the question is: Do you remember who suggested it at that particular meeting?

A. I do not, no.

Q. Was there a C. I. O. union in the picture at that time? A. No, I do not know.

Q. Was there any talk around the plant, so far as you know, of a C. I. O. union?

The Witness: No, I don't recall whether it was necessarily C. I. O. or A. F. of L., but there was talk of unions, that is all.

Q. (By Trial Examiner Paradise) Now, I am curious about this provision on the ballot. You have various alternatives. You have the C. I. O., the A. F. of L., Independent Union, and [113] then you have an alternative of another talk by—what is his name—Mr. Meyberg. Do you remember that?

A. Yes.

Q. In other words, there seems to be the choice between voting for a union or voting to have another talk by Mr. Meyberg. Do you remember any discussion of anything of that kind at the meeting?

A. Yes. I remember that some of the fellows were undecided as to what to do. They thought that the company—in fact, I wouldn't say Mr. Meyberg—that the company, in fact, would give us what we wanted without forming a union of any kind, and that was the idea of some of the employees, that we approach Mr. Meyberg before going into any union, and his talk was more or less on that line.

Q. Whose talk was more or less on that line?

(Testimony of Richard F. Kadous.)

A. Well, if Mr. Meyberg would talk to us in regard to union, why, it was more or less on whether we were to have any union at all.

Q. I am frank to say I don't know what you are talking about.

A. Well, what I mean is that we were to have another talk with Mr. Meyberg and get our wage demands without forming a union, why, that was the idea of talking with Mr. Meyberg, to get our wage demands without forming any union of any kind.

Q. Well, had there ever been any talk with Mr. Meyberg along those lines before? [114]

A. No, I don't think there had.

Q. (By Trial Examiner Paradise) There is only one other question I want to ask. Was there any meeting of the employees or of any groups of employees after the meeting at which Mr. Voorhees spoke, with regard to the holding of this election?

A. No, there was none.

Q. Were any instructions given to Mr. Frauenberger at the meet- [115] ing at which Mr. Voorhees spoke as to preparing ballots and seeing the election went through?

A. I don't think there were any instructions given, but Mr. Frauenberger more or less took it on himself to go ahead with the situation.

Q. (By Mr. Watkins) Just one question: Are you a member of a labor organization at the present time? A. Yes, I am.

Q. C. I. O.? A. Yes, I am.

ERIC G. HULPHERS,

called as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued) [116]

Q. (By Mr. Cobey) Now, Mr. Hulpfers, calling your attention to the month of August, 1937, do you happen to know whether there was any talk among the employees about joining labor unions?

A. Yes, there was. We had been approached by solicitors for the unions, from one union especially, the A. F. of L.

Q. Had you been approached by any C. I. O. solicitors?

A. I hadn't myself, or anyone to my knowledge.

Q. Do you recall whether or not during this period there were any meetings held in the shipping room of the warehouse? A. Yes.

Q. Did you ever attend any such meetings?

A. Yes, I attended two.

Q. (By Mr. Cobey) How were you notified of the first of [117] these meetings? In other words, how did you learn of the first of these meetings?

A. I believe it was by grapevine. I know there was quite a bit of discussion about this meeting that we were going to have on the shipping floor.

Q. Can you place about when this first meeting occurred?

(Testimony of Eric G. Hulphers.)

A. In August, 1937; I say in the first half of the month.

Q. In the first half of the month?

A. I believe.

Q. Now, how many employees were at this first meeting? A. Oh, 20; around 20.

Q. Were there any women there?

A. There might have been one or two.

Q. What time of day was it held?

A. It might have been during the week, shortly after 5:00 o'clock.

Q. Can you tell me whether or not any of the following individuals were there: Mr. Sage?

A. Yes, sir.

Q. Mr. Hill? A. Yes.

Q. Mr. Gates? A. Yes.

Q. Mr. Hook? A. Yes. [118]

Q. Mr. Luck? A. Yes.

Q. Mr. Nesbit? A. Yes.

Q. Mr. Hatfield? A. Yes.

Q. Can you tell us what happened at this meeting?

A. Well, it all started out that we were told by Mr. Sage to take seats around, he had a discussion he thought was quite important at this time. So we all took seats around on different platforms and different piles of grass and shipments, and he got up and addressed the meeting, called the meeting to order, and he stood on a small platform used

(Testimony of Eric G. Hulphers.)

for loading and storage of sacks, and such. Do you want me to go ahead?

Q. Yes. What did he say, do you remember?

A. He said there had been talk of meetings in the building—of unions in the building—pardon me—and this was brought to his attention by gossip around the building and several actions that had taken place.

So he said, "We are all one big group, a happy family, and we want to be sure whatever we do is right." He said it seems to him that there had been talk of an outside union. He said, "Before we go any farther, remember that we all have a job that we want to keep," and he said something to the effect, "Let's not do anything to spoil our job at Germain's, or to [119] put ourselves into a circumstance so we won't be employed there any more."

He said, "Mr. Meyberg and Mr. Schoenfeld have plenty of money, and they could close the doors at any time, and it wouldn't make any difference to them."

Q. Have you any recollection of what he said along that line? A. Yes.

Q. What did he say?

A. As I recollect, he said that the heads of the company would rather see a house union go in, and he said he knows a friend or business associate who has had some experience along that line, and that maybe he could call upon him at this time for aid

(Testimony of Eric G. Hulphers.)

to what he felt was our cause, and several of the people on the floor, the majority, I believe, agreed with him to call this man in, that they would listen to anybody at a time like this, because I believe their view was that because [120] they were getting very poorly paid.

So he said, "All right, I will get in connection with this man and see your department heads upon the progress and about the next meeting."

Q. Do you know——

A. (Continuing) Then he shook hands with several of them.

Q. Pardon me. Do you know by "department heads" to whom he was referring?

A. Well, I imagine the heads over the different departments, men who have two or three—

Q. To whom specifically was he referring?

A. Oh, I would say Mr. Frauenberger, Mr. Nesbit, Mr. Hatfield, Mr. Hook, probably Mr. Luck.

Mr. Watkins: Now, just a moment. I move that that be stricken as the witness' conclusion, unless he testifies that that was what Mr. Sage stated, that those were the people he named.

Mr. Cobey: I think he is merely stating what he understood, the individuals he understood Mr. Sage meant when he referred to department heads.

Mr. Watkins: I will make the further objection that it is in no way binding upon the respondent in this case as to what he understood or what he thought.

(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: I will let it stand as a statement of the witness' understanding, and nothing more. [121]

Q. (By Mr. Cobey) Does that complete your recollection of the meeting? A. Yes.

Q. Do you know how long it lasted?

A. About 20 minutes. [122]

Q. Now, following this first meeting in the warehouse which you attended, did you attend any other meetings of the employees that were held there? [123]

A. Yes. About a week or ten days after the first meeting. I believe it was still in August, 1939.

Q. Do you recall what time of day this meeting was held?

A. I believe that was held at 1:00 o'clock on a Saturday. Excuse me. Correction back there. That is 1937.

Q. This meeting was also held in the shipping floor of the warehouse? A. Yes.

Q. (By Mr. Cobey) Do you recall how many employees were at this meeting?

A. About 30.

Q. Were there any women there? A. Yes.

Q. Do you have any idea how many?

A. About ten to a dozen.

Q. Was Mr. Hill there? [124]

A. He was there at the beginning of the meeting, but he asked if he was eligible, and Mr. Sage

(Testimony of Eric G. Hulphers.)

says, "No, you are not eligible." So he left and took Mr. Gates with him.

Q. Mr. Gates had been there up to that time?

A. Yes.

Q. That occurred at the start of the meeting?

A. Yes.

Q. Were Mr. Hook and Mr. Nesbit and Mr. Luck and Mr. Hatfield there? A. Yes.

Q. Can you tell us what happened at this meeting?

A. Well, there was a man there by the name of Mr. Voorhees, and Mr. Sage opened the meeting, he addressed the group as to the nature of the meeting.

Mr. Watkins: Just a minute. I object to that statement and ask that it be stricken as a conclusion of the witness, "he addressed the group as to the nature of the meeting."

Trial Examiner Paradise: Motion granted. What did he say?

Q. (By Mr. Cobey) Just tell us what he said.

A. Oh, to my knowledge, he said, "Well, we will meet here again, as a group of us," he said, and as I recall he said, "I promised that I would bring a man of my acquaintance up to address you people, a man who has the knowledge of independent unions, for he has formed several independent unions," and he [125] said, "I think I will let him talk to you now," he said, "because we all know this

(Testimony of Eric G. Hulphers.)

is the purpose, of trying to start an independent house union of ours."

Q. Then Mr. Voorhees got up and spoke?

A. Yes.

Q. Do you remember anything about what he said?

A. He said, he introduced himself as Mr. Voorhees, said he had had some experience around the different places. He mentioned Cudahy and I believe an aircraft company at the time, and said he had experience in starting independent house unions, and several of them were going quite well, and he said he had talked to the boys over there and he had got a large increase in money, especially the truck drivers, for getting together this house union.

So he says, "I think it will be very successful." He says, "You look like a nice bunch of people here," and so he said, "I will tell you a little bit about it. I think it is profitable, and, oh, the dues for a house union won't be very much, and not as much as an outside union, and there would be a nominal initiation fee."

He asked the group if they understood about a house union and how it was run, and how it was started. So I believe several in the group says, no, they knew nothing about house unions.

So he said, "You ask the questions and I will try to [126] answer them, and we will take up

(Testimony of Eric G. Hulphers.)

about the rest of this time in doing just this." So several people asked questions.

Q. How long did this meeting last?

A. Oh, it might have been as long as an hour.

Q. Did anybody else speak besides Mr. Voorhees?

A. Yes. As I recall now, I believe there was someone else there. There was a man from Cudahy Packing Company, I believe.

Q. What did he talk about?

A. Oh, he didn't say much. He got up and said, "We are doing fine over there, doing fine, and everybody is happy, and hope you will join this, because I know you will like it and everybody will agree on everything, and everything will turn out for the best." And I believe that's all he said.

Q. Now, you were in the court room when Mr. Kadous testified, weren't you? A. Yes.

Q. I call to your attention his testimony that at this meeting there was discussion about an election? A. Yes.

Q. Do you recall such discussion? A. Yes.

Q. Will you tell us what was said, and by whom, if you recall?

A. Well, Mr. Voorhees said that before he can go any further [127] with his part of the thing, there would have to be an election in the warehouse and in the company.

Q. Is that all that you recall as to what took place at this meeting? A. Yes.

(Testimony of Eric G. Hulphers.)

Q. As to what was said about the election?

A. Yes. [128]

Q. (By Mr. Cobey) Mr. Hulphers, calling your attention to the period of the latter part of August, 1937 and the early part of September, do you remember whether the election occurred in the warehouse at that time?

A. Yes, there was an election.

Q. Would you tell us the circumstances of that election?

A. Well, at the second meeting on the shipping floor, Mr. Voorhees said before we could go further into the case of forming a house union, there would have to be an election, so that is how it came about.

Q. And when was it held?

A. It was held between the second and third meeting in the latter part of August.

Q. You mean between the second meeting in the warehouse and the Hill Street store meeting?

A. And the Hill Street store meeting, at the Hill Street store. [131]

Q. At what time of day was it held?

A. Oh, I don't know. It started in the forenoon sometime, I imagine.

Q. Did you participate in the election?

A. I did not. I just voted, is all.

Q. Will you tell us where you voted?

A. Yes. Our ballot box for the traffic department was on Mr. Frauenberger's desk, and Kadous come

(Testimony of Eric G. Hulphers.)

out to me and we talked on the matter.

Q. You mean Mr. Richard Kadous?

A. Mr. Richard Kadous. We talked on the matter a while, and then we went in and voted, being we thought we were going to vote the same way, we always do that. I went in and voted. I don't know where he voted.

Mr. Watkins: May I have the witness' answer, please?

Trial Examiner Paradise: Read it, Miss Reporter.

(The answer was read by the reporter.)

Q. (By Mr. Cobey) That was the extent of your participation? A. Yes, my part of it.

Q. Were you informed of the results?

A. Yes.

Q. How were you informed?

A. Someone had—someone in the traffic department, I believe it was, had a list of the results and I looked at it.

Q. Mr. Hulphers, I hand you Board's Exhibit 8. Have you [132] ever seen such a document before? A. Yes.

Q. Was that the ballot that was used in the election to which you have referred?

A. That is the ballot, yes, sir.

Q. Do you happen to know how that ballot was prepared? A. No, I have no idea.

Q. I show you Board's Exhibit 9. Was that the list that was brought around to you?

(Testimony of Eric G. Hulphers.)

A. Yes. That is the same figures. Whether it is the same list, I don't know.

Trial Examiner Paradise: Excuse me for interrupting, but I would like to get a continuous story on this, if possible.

Mr. Cobey: Yes.

Q. (By Trial Examiner Paradise) You say at the meeting, the second meeting in the shipping department, Mr. Voorhees said that there should be an election before you went ahead with the organization of the house union. Is that correct?

A. Yes, sir.

Q. Now, how long after that was it that you actually had the vote?

A. As close as I can remember, the second meeting was shortly after one o'clock on a Saturday, and I believe the election took place during the first part of the following week. That was in September, 1937. [133]

Q. Now, following the meeting at which Mr. Voorhees spoke, what was the next thing you knew about the election being held, before you actually went to vote?

A. Oh, I believe just the grapevine method, of different people talking about it, is the way I got it.

Q. Was there any formal announcement at any time that the vote was going to be had on a particular day?

(Testimony of Eric G. Hulphers.)

A. I never seen any, because I was in the elevator, and I always got—the boys always talked to me anyway.

Q. Then the next think you knew about the election was that you heard from somebody that you were going to vote on a certain day, is that correct?

A. Yes.

Q. How did you know to whom you were to go to get your ballot?

A. Well, I didn't know it. It was brought to me earlier—Richard Kadous told me to go in the shipping office and I went in there, and I was given a piece of paper, by Mr. Frauenberger, I believe.

Q. What time of day was that?

A. Oh, about ten or eleven o'clock.

Q. And was that piece of paper your ballot?

A. Yes, sir.

Q. Did you vote at that time or later?

A. At that time.

Q. Now, after you had voted, what was the next thing you [134] heard in connection with the election?

A. In the afternoon of the same day Mr. Kadous, I believe it was, brought a list around and showed me the results.

Trial Examiner Paradise: I see. Proceed. I am sorry to have interrupted, counsel.

Q. (By Mr. Cobey) Now, Mr. Hulphers, do you know whether or not after this election there was a meeting in the Hill Street store of the employees?

(Testimony of Eric G. Hulphers.)

A. Yes, sir, there was.

Q. Did you attend such a meeting?

A. I went up there to see how many had gone, and all, but I did not participate in the meeting. I went up to see and——

Q. But you were there?

A. I seen a couple people up there.

Q. How were you notified of this meeting?

A. I believe there was a slip on the time clock.

Q. Before attending the meeting, were you aware of its purpose? A. Yes.

Q. You knew what the meeting was to be about?

A. Yes, sir.

Q. How long after the election in the warehouse did the Hill Street meeting occur?

A. About a week or ten days.

Q. Can you tell us what happened at the Hill Street meeting?

Mr. Watkins: Is this of the witness' own knowledge? [135] I thought he said he wasn't there.

Mr. Cobey: Yes, he said he was there.

The Witness: I went up to the meeting to talk to several fellows. Then I went home for reasons of my own.

Q. (By Mr. Cobey) You were not there at the meeting?

A. No, sir. I just went to see who attended it. Then I went home.

(Testimony of Eric G. Hulphers.)

Q. Can you tell us whether or not you ever became a member of the Consolidated Seedsmen's Union? A. Yes, I did.

Mr. Cobey: May I have these marked as Board's Exhibits 11-A, B, C and so forth?

(Thereupon the documents referred to were marked Board's Exhibits 11-A to 11-G, both inclusive, for identification.)

Q. (By Mr. Cobey) Mr. Hulphers, I hand you Board's Exhibit 11-G, for identification. You will note that thereon there appears a signature (indicating). Can you tell us whether or not that is your signature? A. Yes, that is my signature.

Q. Can you tell us when and where you signed Board's Exhibit 11-G, for identification?

A. On the shipping floor.

Q. Can you tell us what time of day it was?

A. No.

Q. Was it during working hours? [136]

A. Yes.

Q. Do you remember whether or not somebody brought it to you?

A. Yes, someone brought this up to me.

Q. Do you remember who it was?

A. I believe Frank Miller and Richard Kadous were together when I signed it also at the same time.

Q. You mean one of them had it?

(Testimony of Eric G. Hulphers.)

A. Yes. Which one, I don't know. It was right there.

Trial Examiner Paradise: Has the date of this been fixed?

Q. (By Mr. Cobey) Do you recall when you signed it?

A. Not the exact date, no, sir.

Q. Well, can you place it? Was it before or after the Hill Street store meeting?

A. It was about September 1, 1937.

Q. Was that before or after the Hill Street store meeting, if you recall?

A. I couldn't say for sure at this time. [137]

BOARD EXHIBIT 11-A

PRE-ORGANIZATION AGREEMENT

We, the undersigned, employees of the Germain Seed & Plant Company, desire to form an independent union, for the purpose of dealing with our employer under the provisions of the National Labor Relations Act, known as the Wagner Act, and we do hereby appoint W. S. Clark, Harold Frauenberger, Dorothy Turton, K. R. Luck, A. Hook, H. B. Orr and Morris Stearn as a committee to formulate an independent union for us and to represent us with our employer under the provisions of the National Labor Relations Act known as the Wagner Act.

(Testimony of Eric G. Hulphers.)

Each of the undersigned has or will pay \$1.00 as initiation fee for membership in the union and 50¢ a month as dues commencing one month after becoming a member.

Name	Amount Paid
W. S. Clark
O. E. Johnson
E. E. Porter
L. Farley
T. G. Harrison
Ethel F. Durand
Louise Grow
Converse
Mary Court
Cadd
Eleanor Newmark
W. J. Smith
E. Ganster
Leonard G. Wade

BOARD EXHIBIT 11-B

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Blanche L. Eaton	..... Pd.
Estella Gunter	.....
Viola B. Gates	..... Pd.
Myrtle Butterfield	\$1.00
Dean S. Westfall	\$1.00

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
Charlotte Miller	.....
Fern A. Wingrove	.....
Edna Hutchinson	.....
Justin Scharff	..... Pd.
C. L. Van Doren	..... Pd.
C. C. Fitzgerald	..... Pd.
Dorothy Turton	\$1.00
C. K. Douglass	.....
J. Panabe	.....
W. P. Sage	.....
A. Stanley Williams	.....
Al Isleib	\$1.00
C. C. Charles	.....
Verna Newman	.....
Ella Saylor	.....

BOARD EXHIBIT 11-C

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
K. R. Luck	..... Pd.
Mae Molyneux	\$1.00 Pd.
Frances Fox	..... Pd.
M. Busching	..... Pd.
Virginia Bland	.....
S. Cora V. Dempsey	..... Pd.
Betty Anderson	..... Pd.
Florence May Siemsen	.....

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
L. Helen Martin	.....
Nyda Hansen	..... Pd.
Emily Nelson	..... Pd.
Corinne Harger	..... Pd.
Ida New	..... Pd.
Honorary Member Marguerite L. Bailey	..... Pd.
Daisy Von Zell	.....
Pearl Siemsen	.....
Dorathy Davis	.....

BOARD EXHIBIT 11-D

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Mary B. Martinez
Harry B. Orr
Lewis B. Williams
Minnie Therese Sievers
A. Coleman
L. Poor
Harry Fenster
Refund	\$1.00

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 11-E

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
V. J. Nesbit	x1.00 A.H.
F. A. Wall, Jr.	1.00 A.H.
D. L. Cramsey	1.00 A.H.
F. A. Wall	1.00 A.H.
James Neal	1.00 A.H.
Roy O. Yoakum	1.00 A.H.
Paul D. Spence	1.00 A.H.
Alfred A. Freeman	1.00 A.H.
Elizabeth Garnett	1.00 A.H.
Patrick J. Chavez	1.00 A.H.
Josephine Cook	1.00 A.H.
Alice Hook	1.00 A.H.
Mary Ann Miller	1.00 A.H.
xIris Slafter	.....
xPearl Ervin	.....
xErma Wright	.....
xGrace Wall	.....
xDaisy Von Zell	.....
xGrace Bland	.....
Otto Witt	1.00 A.H.
D. G. Hatfield	1.00 A.H.
A. Hook	1.00 A.H.
Edward S. Casey	1.00 A.H.
A. VandenVeer	1.00 A.H.

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
Evelyn Smead	1.00 A.H.
Ruth Dorothy Gray	1.00 A.H.
Marion Y. Otto	1.00 A.H.
J. H. Colbry	1.00 A.H.
Bob J. Kadous	1.00 H.F.

BOARD EXHIBIT 11-F

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Ramon Magdalena	1.00
Denver Hysell	1.00
Amos S. Kays	1.00
Theodore Schrader	1.00
Morris Stearn	1.00
Erich Regan	.....
A. G. Russell	1.00

BOARD EXHIBIT 11-G

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Frank H. Miller	Paid
Richard Kadous	Paid
Eric G. Hulphers	Paid
Stanley Watson	
Charles F. Hill	Paid

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
Louis Marquez	Paid
Jack Butterfield	
R. H. Montgomery	Paid
Bill Epperson	Paid
Harold Frauenberger	Paid

Q. (By Mr. Cobey) You say you became a member of the Consolidated Seedsmen's Union?

A. Yes, sir.

Q. Did you sign a membership card or application?

A. Yes, sir.

Q. Do you remember the circumstances under which you signed such a card or application?

A. During noon hour. I was going—yes, I was going to punch out for noon hour, and I went by the office and I was handed one.

Q. Do you remember who handed you one?

A. I am not sure. I think Miss Fern Wingrove handed it to me.

Q. Now, are you still a member of the Consolidated Seedsmen's Union?

A. No.

Q. When did your membership cease?

A. Last October, in 1940.

Q. Can you tell us whether or not you attended any meetings of the Consolidated Seedsmen's Union?

A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Do you know how many meetings you attended? [139]

A. Last year about seven, and, oh, about a dozen before that.

Q. What was the average attendance at the meetings that you attended?

A. Well, before they started bank night, there was, oh, a few above 15 at the meetings. Sometimes they couldn't hold a meeting because there wasn't enough there.

Q. You mean there wasn't a quorum?

A. There wasn't a quorum.

Q. Do you know when bank night started?

The Witness: It started in 1939; in the fall, I believe. [140]

Q. (By Mr. Cobey) Mr. Hulphers, during the period from the inception of the Consolidated Seedsmen's Union, during the period of your employment, did you at any time observe or did you not observe any solicitation for membership in that organization? A. Yes. [150]

Q. (By Mr. Cobey) Did you observe any such solicitation yourself?

A. I solicited one member myself.

Q. Whom did you solicit?

A. Mr. Charles Loy.

Q. When and where did that solicitation occur?

A. On the fourth floor, in the presence of other people working there.

(Testimony of Eric G. Hulphers.)

Q. What other people?

A. Well, Mr. Nesbit and a Mr. Stone.

Q. Can you give the time when that solicitation occurred,—fix the approximate date?

A. The date was the middle of last summer.

Q. The middle of last summer. Can you place it any more closely? A. No.

Q. What time of day did it occur?

A. I don't know.

Q. Do you know whether or not it was during working hours? A. Yes.

Q. It was while you were on the job?

A. Yes, sir.

Q. How were your dues collected from you, that is the dues of the Consolidated Seedsmen's Union?

[151]

Mr. Watkins: Are you speaking just about Mr. Hulphers' personally?

Mr. Cobey: Yes, that is right.

The Witness: Well, I went in—you see, I paid some of mine of Richard Kadous, when he would be around work there and checking out trucks. I paid to Frank Miller on his desk in the shipping office; to Viola Gates at her desk in the office; to Mrs. Bobbie Otto on the fifth floor in her department. I paid to Howard Tabor once in the traffic department, and I paid at the meeting a couple of times.

Q. (By Mr. Cobey) Were any of these payments made during working hours?

(Testimony of Eric G. Hulphers.)

A. Oh, about all of them except at the meetings.
[152]

BOARD EXHIBIT 12-A

SUGGESTIONS

1. Each department shall be morally responsible for its individual mission in the Germain Seed & Plant Co. [O. K.]

2. Overtime shall be before or after regular designated working hours, Sundays, holidays, and vacations included. The rate of pay shall be figured at time and one half. [O. K.]

3. The personnel of each department shall be adequate to safeguard the health of the employees and the business of Germain Seed & Plant Co. [O. K.]

4. Vacations: For one year to four years employment, inclusive, one week vacation with pay; for five years and over employment, two weeks with pay, [under advisement for vacation season next year] [O. K.]

5. Holidays shall include one working day off with pay for the following: New Years, Decoration Day, July 4th, Labor Day, Thanksgiving, Christmas. [O. K.]

6. At all times, seniority rights shall be respected when when gauging eligibility for advancement or lay-offs. [O. K.]

7. Seniority rights shall be respected in part-time seasonal work. [O. K.]

(Testimony of Eric G. Hulphers.)

8. The 1929 monthly scale of wages shall be restored and all departments shall have the same division of positions as in the year 1929. [Discussed Individually] [No.]

9. In case of absence in advanced positions, the one filling the position temporarily shall draw the pay rate of the position that the employee has been advanced temporarily to. [No]

10. The delivery trucks shall have meters to record overtime and the day's work. [To be worked out by the Firm and the Union] [O. K.]

11. All work from all divisions to be delivered the next day shall be in the Billing Department by 4 P.M., and on Saturdays by 11:30 A.M. [To be worked out by the Firm and the Union] [O. K.]

12. All delivery department billing that is to be delivered the next day shall be ready for the delivery department at closing time the night before. [To be worked out by the Firm and the Union] [O. K.]

13. Exceptions to the above shall be made by Germain Seed & Plant Co. to safeguard their business, but these exceptions shall not become the rule to break down this certain specified interval of time between the filling of delivery orders and the checking of merchandise on the delivery trucks. [O. K.]

14. All shipping floor doors shall be closed during the lunch hour, or a staggered lunch hour shall be arranged. [O. K.]

(Testimony of Eric G. Hulphers.)

15. There shall be a complaint department installed which shall handle the complaints on all movements of merchandise other than present day's work. [To be worked out by the Firm and the Union] [O. K.]

16. A floor man shall be furnished to check each outgoing load of merchandise and each driver shall load his own truck. [O. K.]

17. Traffic citations caused by faulty equipment shall be paid by the firm. [O. K.]

18. Regular working hours shall be as follows in the delivery department: One truck driver start at 7 A.M. with one hour for lunch. Regular work hours on week days except Saturday shall end at 4 P.M.; on Saturdays they shall end at 11:00 A.M. The dispatcher's hours shall be the same as the above to more fully assist the early movement of merchandise. All other truck drivers shall start at 7:30 A.M., with one hour for lunch. Regular work hours on week days except Saturday shall end at 4:30 P.M.; on Saturdays they shall end at 11:30 A.M. All other Traffic Department employees shall conform with regular warehouse hours. [To be worked out by the Union and the Firm] [O. K.]

19. All drivers shall assist in the work on the shipping floor to the best of their ability. [O. K.]

~~20. The weekly hours shall be 40 hours for women and 44 hours for men.~~

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 12-B

Agreements Obtained by the Consolidated Seedsmen's Union, Inc., for the Members from German Seed & Plant Company.

DIVISION THREE

1. Six holidays during the year.
2. One week vacation with pay to all members who have been with the firm one year.
3. Overtime to be paid at time and one half, when ordered.
4. Working hours for men changed from 47 hours to 44 hours per week.
5. Pay increase of from 5% to 18%.
6. A better allotment and statement concerning sub-foremen and their positions.

These agreements were obtained by your Division Officers who are responsible for the Union business of your Division.

Your Officers are:

Mr. Hatfield—Director

Mr. Hook—Dept. Representative

Mr. Hook and Mr. Hatfield made these agreements with the firm and were the representatives that sat with the Management at the time these agreements were made.

Any further questions concerning these agreements should be answered by your Officers who made them, which would be mainly Mr. Hook who handles

(Testimony of Eric G. Hulphers.)

your grievances or complaints. If he can not answer your questions, he should take it up with Mr. Hatfield, your Director, who will issue the final statement on any subject in question.

CONSOLIDATED SEEDSMEN'S
UNION, INC.

Dec. 22, 1937.

Agreements Obtained by the Consolidated Seedsmen's Union, Inc., for Their Members from Germain Seed & Plant Co.

Div. has obtained since the 1st of Oct., 1937.

1. Six holidays during the year.
2. One week's vacation with pay to all members who have been with the firm one year.
3. Overtime is time and one-half, when ordered.
4. Shorter hours. Working time changed from forty-seven hours a week to forty-four.
5. Pay increase of from 5% to 18%.
6. A better allotment and statement concerning sub-foremen and their positions.

These agreements were obtained by your division officers who are responsible for the Union business of your division. Your officers are Mr. Hatfield, Director; Mr. Hook, Dept. Rep.

Mr. Hook and Mr. Hatfield made these agreements with the firm and were the representatives that

(Testimony of Eric G. Hulphers.)

sat with the management at the time these agreements were made.

Any further questions concerning these agreements should be answered by your officers who made them, which would be mainly Mr. Hook, who is your Dept. Representative, and the one who handles your grievances or complaints. If he cannot answer your questions he should take it up with Mr. Hatfield, your Director, who will issue the final statement on any subject in question.

CONSOLIDATED SEEDSMEN'S
UNION, INC.

Q. (By Mr. Cobey) Now, Mr. Hulphers, calling your attention to the latter part of August 1940, will you tell us whether or not there was any talk at that time among the employees about joining outside labor unions?

A. There was continuous talk among the men——

Mr. Watkins: Just a minute. I move that the answer so far given be stricken as not being responsive to the question asked.

Trial Examiner Paradise: Read the question and answer, please, Miss Reporter.

(Question and answer read by the reporter.)

Trial Examiner Paradise: Motion denied. Objection overruled. Have you completed your answer?

The Witness: No. [159]

(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: Complete it, then.

The Witness: To continue the answer: Especially among the men on the upper floors.

Q. (By Mr. Cobey) The upper floors of the warehouse? A. Yes, sir.

Q. Do you know whether or not any of the men took any steps at that time to affiliate themselves with any outside labor organization? A. Yes.

[160]

Q. (By Mr. Cobey) What did those men do?

A. In August of 1940, the latter part of August, we all went down to see the A. F. of L.

Q. Who is "we"?

A. Do you want the names?

Q. Yes.

A. Howard Tabor, Artis—what is her name, Miss Wingrove? Artis—I know that is her first name.

A Voice: Who?

Mr. Cobey: Pardon me.

The Witness: Well, I don't recall the second name, her last name. Her first name is Artis.

Q. (By Mr. Cobey) All right. Go ahead. [161]

A. Mr. Harry Vorce, Roy Yoakum, Al Freeman, Bob Montgomery, Charles Loy, Claude Davis, Harry Hartline, John Epperson.

Trial Examiner: Is it important to have all of these names, counsel?

The Witness: I don't remember the rest now.

Mr. Cobey: Yes. As a matter of fact, I think there is just one more.

(Testimony of Eric G. Hulphers.)

The Witness: I believe they will all testify to it when they come to the witness stand.

Mr. Watkins: Do we know yet on what date this was in August?

Q. (By Mr. Cobey) Can you place the date when these men went down to the office?

A. Yes. I believe it was September 3rd.

Q. Do you know what day of the week it was? Do you have any recollection of that at all?

A. No.

Mr. Watkins: You are talking about 1940?

Mr. Cobey: Yes. September 3, 1940.

Q. (By Mr. Cobey) Now, you say that these persons whom you named went down to the A. F. of L. on that date? A. Yes.

Q. Do you know what happened down at the office? A. Yes.

Q. What happened? [162] A. Well——

Mr. Watkins: Just a minute. What office are we talking about?

The Witness: The A. F. of L. office.

Q. (By Mr. Cobey) Did these men sign up application blanks at that time? [163]

A. All but two people.

Q. Do you remember which two did not?

A. Yes.

Q. Which two were they? A. Artis——

Q. Is that Artis Shively?

A. Yes. It sounds right. I heard her name.

(Testimony of Eric G. Hulphers.)

Q. And who else?

A. And Bob Montgomery.

Q. Now, do you recall during this same period whether or not any of the employees requested wage increases from Mr. Meyberg?

A. Yes, they did.

Q. Did you ever request such a wage increase?

A. Yes. [164]

Q. (By Mr. Cobey) When was this request made?

A. This request was made at the union meetings of the Consolidated Seedsmen's Union.

Q. That was not a request on Mr. Meyberg, was it?

A. Following the request for wages of the Consolidated Seedsmen's Union, we went down to—may I say this, tell this?

Q. Subject to a motion to strike, go ahead.

A. We went down to the A. F. of L. to sign applications only, to see if they would take our case.

The Witness (Continuing): So following the day we filled out our applications, we went in to Mr. Meyberg, three of us.

Q. (By Mr. Cobey) Who were the three?

A. Charles Loy, Bob Montgomery and myself.

[165]

Q. (By Mr. Cobey) How was this meeting with Mr. Meyberg arranged?

(Testimony of Eric G. Hulphers.)

A. Arranged by Bob Montgomery for eleven o'clock, following the day we signed our applications.

Q. So, according to your testimony, that would be September 4, 1940? A. Yes.

Q. Who arranged the meeting?

A. Bob Montgomery.

Q. Will you tell us what was said at this conference between you three and Mr. Meyberg?

A. Yes.

Q. As I understand it, they were the only people present, you three employees and Mr. Meyberg?

A. Yes.

Q. And it was held where?

A. In his office. We went in there and I told him there was quite a lot of unrest among the employees. So I said that we thought we could come to him to see if we couldn't straighten it out, rather than take any steps we were going to take, [166] because we—the Consolidated Seedsmen's Union had fallen down on us in demands, and in the matter of getting us a wage increase that we thought we had to have to live on.

So he said he didn't know there was any unrest among the men and any unagreeable circumstances of this kind, so he said, except in one case where Charles Loy was referred to, where he came up and said he didn't get enough wages.

He said, "If there is such goings on, why, I want to talk to all the men," he says, "and you

(Testimony of Eric G. Hulphers.)

make a time that is convenient to all of them to meet me, and I want to talk to them.”

And that is about all that was said.

Q. Was such a meeting held? A. Yes.

Q. When was that held?

A. Following quitting time that same night, we punched out the clock and we all went in his office.

Q. Did you have any guard for meeting them in there?

A. Yes. I went down at five minutes to and asked him if it was all right at that time to come in. He said, “Sure. Come in and bring the men in with you.”

Q. That is five minutes before quitting time?

A. Yes. So I stayed at the clock there, and when they came out, headed them all into his office.

Trial Examiner Paradise: Which men are you referring to [167] now?

The Witness: Nearly all the men in the warehouse; about 25.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Can you tell us what occurred at this meeting?

A. Yes. He opened the meeting by saying that—asking if we had a speaker, and I believe several remarks were made, “No, no one specially.”

Q. (By Mr. Cobey) Just state what you said at that meeting.

(Testimony of Eric G. Hulphers.)

A. Yes. I said, "There has been a lot of unrest in the building, the men are not getting enough wages to live on, groceries are going up, and all, and there has been no wage increase for a long time now, and the men now claim they can't live on their wages, and they will have to seek employment some place else unless there is more money paid, or get in some of the defense work or some other work, if they can, and that they are now taking steps to join outside unions."

Before we go any further in this matter, I said we would [168] like to consult him ourselves, because we had not gotten any satisfaction through the union.

Q. That is, through the Consolidated Seedsmen's Union?

A. That means the Consolidated Seedsmen's Union.

So Charles Loy brought up, he said—he said, "Does a member have to be a member—does an employee have to be a member of the Consolidated Seedsmen's Union?"

So Mr. Meyberg said, "Not necessarily. I am not interested in whether he is a member or not. If he is dissatisfied, I will try to give him what he wants."

Q. Was that all that was said?

A. Mr. Meyberg said something to the effect that he wanted to talk to the men at a later date, the

(Testimony of Eric G. Hulphers.)

men only, and that he would talk to the women separately.

Mr. Watkins: Were there women in this meeting, may I ask?

Mr. Cobey: Yes, certainly.

Q. (By Mr. Cobey) Were there women in this meeting? A. Yes.

Q. How many? A. About five.

Q. Do you know who they were?

A. Oh, a couple of them. Do you want me to name them?

Q. Yes.

Mr. Watkins: I don't think that is important.

Q. (By Mr. Cobey) Well, just name the ones you recall. Do [169] you recall any?

A. Fern Wingrove and Bobbie Otto, Mrs. Cook. That is all I remember for sure.

Q. Now, was this further meeting for the men held? A. Yes, it was.

Q. When was that held?

A. About a week later.

Q. Will you tell us how it was arranged, if you know?

A. Yes. At the first meeting he said for any of the men to get a list of them who wanted to come to a dinner, that he would give them a dinner, so he said, "and following that dinner, I will speak to all the men on this problem of increase of wages, unions and such."

(Testimony of Eric G. Hulphers.)

So some of the men said that they couldn't come. So he said "That's all right." He said, "Those that want to come and can come and it is convenient," he said, "and I will give you a dinner over at the club, and following this dinner we will have a meeting, and the remainder of the people who can come down after the dinner can all congregate in the office and talk the thing over."

Q. Was the dinner and meeting held?

A. The dinner and meeting was held.

Q. Where was the dinner held?

A. At, well, I hear it referred to as the Business Men's Club and the Terminal Club. [170]

Q. What took place at the dinner?

Mr. Watkins: Just a minute, before you go any further. Mr. Examiner, I believe I have had a running objection to this line of testimony, and I wish now to withdraw my objection to it.

Trial Examiner Paradise: Very well.

Q. (By Mr. Cobey) What took place at this dinner?

A. Well, nothing much. We ate our dinner until we couldn't eat any more and, you know, there was a few jokes told, and then we went back over to the office.

Q. How many employees were at the dinner? They were all men?

A. Yes.

Q. How many were there, do you know?

A. About 18.

(Testimony of Eric G. Hulphers.)

Q. Did you make up the list of those that could come? A. Yes.

Q. What happened in the office? How many were there in the office? A. About 25.

Q. Was any other representative of the management there, besides Mr. Meyberg? A. Yes.

Q. Who was that?

A. The vice-president, Mr. Schoenfeld.

Q. Can you tell us what took place at that time? [171]

A. Mr. Meyberg got up and he said he heard it was the understanding among the employees that there was unrest and uneasiness, and they were going to take steps to get more wages, and then he said, "We are all here together, so we want to try to work all these things out among ourselves. We are one happy family," and he says, "you men have been with me a long time, some of you 25 years, some of you about that long, and we have always been a big happy family, and if we can work this thing out, why, we will, because we all want to keep on a friendly scale, every one."

So then he said, "Before I say much more, I wish to present a blackboard here, which shows approximately how the company stands in the books."

So he brought a blackboard up and showed us the figures of the Germain Seed and Plant Company, what he said was the figures, and he ex-

(Testimony of Eric G. Hulphers.)

plained different things, how much he made. I believe he made \$15,000 on twist-ems, and a couple, few thousand dollars on the radio programs, and that is all, about all I remember about that. And so after a little talk on the blackboard, why, he said, "Who is the speaker for the men?"

So Erich Regan, not employed at Germain Seed and Plant Company, he was vice-president of the Consolidated Seedsmen's Union, he got up and said——

Trial Examiner Paradise: You say he was not employed?

The Witness: No. He was a half-owner of the Green Arrow [172] Nursery.

Trial Examiner Paradise: A half owner of what?

The Witness: A half owner of the Green Arrow Nursery, I understood at that time.

Mr. Watkins: He had previously been employed?

The Witness: Yes, he had previously been employed out at the Ranch. What his duties were at the Ranch, I don't know.

Q. (By Mr. Cobey) Do you know when his employment had terminated?

A. No, not exactly.

Q. Well, approximately when?

A. In the summer—spring or summer of 1940.

Trial Examiner Paradise: I am sorry, counsel, but I just want to ask——

Mr. Cobey: Go ahead.

(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: How did he happen to be at this meeting?

The Witness: Well, he was vice-president of the Consolidated Seedsmen's Union.

Trial Examiner Paradise: Did you permit people who were no longer employed by the company to retain membership in the Union, under your constitution and by-laws?

The Witness: We permitted people who were employees of other seed companies, who wished to affiliate with us for bargaining purposes, for the union's benefit, to belong to [173] the Consolidated Seedsmen's Union.

Trial Examiner Paradise: All right. Go ahead.

The Witness: (Continuing) So then he pointed to me and said, "Erich, you are well liked by the men up there and well known by all of them, better known than most of us." he said, "What have you to say on this matter?"

And I said, "I am not discussing this matter tonight. This matter was not called by me and I am not saying a word," so I sat back. I said nothing more.

The Witness: So Mr. Meyberg began to speak again, and he said, "Due to the meetings and the actions taken by the people to see me, and all," he says, "I believe that what you say about the union not coming to me with the demands for an increase. Now," he said, "whatever I do in this case

(Testimony of Eric G. Hulphers.)

will be as of October 15, 1940, so far as increases go in wages," and he said, "I wouldn't go any farther or do anything more until you see how this thing comes out, the wages increase."

So he said, "Whatever dealings I have, I will make through the union."

Q. (By Mr. Cobey) That is, through the Consolidated [174] Seedsmen's Union?

A. Yes, through the Consolidated Seedsmen's Union. He says, "Don't"—he says, "Give me a chance to do something. Being you come up here for the chance, before you do anything, before you call the doctor in," he says, "maybe it is not the right ailment. Maybe you have got the wrong ailment." He said, "Maybe you won't need the doctor."

Q. What did you understand he meant by "the doctor"?

Mr. Watkins: Just a minute. I object to that as calling for the conclusion of the witness and also as calling for speculative testimony.

Trial Examiner Paradise: Overruled.

The Witness: I think he referred to the A. F. of L.

Mr. Watkins: I move that be stricken on the basis of the objection, Mr. Examiner.

Trial Examiner Paradise: Denied.

Q. (By Mr. Cobey) Now, I think your testimony was that Mr. Meyberg said that any raise that was granted would be as of October 15th?

(Testimony of Eric G. Hulphers.)

A. Yes.

Q. Are you certain it was as of October 15th, rather than September 15th?

A. Oh, there is a correction there. On the statement of when the wages increase would go into effect, it was of September 15, 1940. [175]

Q. Was any wage increase actually given?

A. Yes.

Q. When was that given?

A. On October 4th, on a payday.

Q. 1940? A. 1940.

Q. Was that pay increase retroactive?

A. Will you explain that to me?

Q. In other words, did the pay increase take effect prior to the time that it was granted?

A. Yes.

Q. As of what date? A. September 15th.

Cross Examination

Q. (By Mr. Watkins) Mr. Hulphers, going back now to the Voorhees meeting in the warehouse, the first meeting, did anyone speak up at that time on behalf of the A. F. of L.?

A. At the second meeting on the shipping floor?

Q. Just prior to the election? [176]

A. What year?

Q. 1937. I believe you testified about it, that it was in either August or September of 1937, the first meeting at which Mr. Voorhees spoke at the warehouse.

(Testimony of Eric G. Hulphers.)

A. Only to the inquiry of dues, in accordance with dues that would be collected for a house union.

Q. What was said about it? I am asking now about the A. F. of L. Was anything said about the A. F. of L. at that meeting? [177]

Mr. Watkins: I would like to ask that the record show the pause between the question and the answer on these questions.

Trial Examiner Paradise: The record may show that the witness is hesitating long before answering.

The Witness: It has been quite some time ago, and to recollect my memory on that it takes a little while, to remember back, to go over in my mind about this meeting.

Trial Examiner Paradise: Now, have you thought sufficiently about it to recall what, if anything, was said at that meeting about the A. F. of L.?

The Witness: Referring to the A. F. of L. at this meeting, Mr. Voorhees said that a house union would not be so expensive, as far as initiation fees and dues.

Q. (By Mr. Watkins) Had anyone prior to that time raised the question about the comparison of the A. F. of L. with the house union?

A. Not in this meeting. [178]

Q. (By Mr. Watkins) What I am trying to get at, Mr. Hulphers, is whether or not anybody at that meeting, among the men, made any suggestion

(Testimony of Eric G. Hulphers.)

about the American Federation of Labor being on the ballot or being a good union to bring in, or about its dues, or anything of that character.

A. We all knew approximately what the initiation fee and the monthly fees of the outside union were. So taking that in behalf, people present at that meeting on the shipping floor asked what the dues would be in the house union and the initiation fee for a so-called house union.

Q. There had been American Federation of Labor organizers down at the plant prior to this time, had there?

A. Yes, there had, because——

Q. And there had been talk among the men about joining the American Federation of Labor prior to that time? A. Oh, yes.

Q. Had somebody discussed that with you also prior to this time? A. Yes, sir.

Q. More than once? [179] A. Yes.

Q. About how long prior to this particular meeting we are talking about? A. A month before.

Q. How many times would you say anyone discussed the American Federation of Labor or joining it with you?

The Witness: Nearly every lunch hour for a month before these meetings, up until the meeting was held. [180]

Q. (By Mr. Watkins) Then you would say roughly 30 times that somebody had discussed the A. F. of L. with you prior to this meeting?

(Testimony of Eric G. Hulphers.)

A. No. We only had five lunch hours a week, and that would only make about 20 times.

Q. All right. Then 20 times, would you say was the answer to it? A. Yes.

Q. And that is the only time, that is, during the lunch hour was the only time you had any discussion about it?

A. No; after work on the street we discussed this matter probably a half a dozen times.

Q. Then that would make 26, roughly, would it?

A. Yes.

Q. Now then, did you discuss it at any time in addition to those times, that is, after work and during the lunch hour, with anyone?

A. Yes. During the working times we did, following, oh, several hot arguments between Mr. Hatfield and Mr. Sidebottom, and Mr. Sage talked to Mr. Hatfield about it.

Q. You say Mr. Sidebottom? A. Yes, sir.

Q. Then after some arguments at some time then there was a discussion on company time of the American Federation of Labor? Is that correct?

[181]

A. Yes.

Q. And there was some solicitation of membership in the American Federation of Labor during those times, wasn't there? A. Yes, there was.

Q. All right. Now, you were pretty active around the plant, weren't you? A. Yes, sir.

(Testimony of Eric G. Hulphers.)

Q. You were operating an elevator and knew what was going on? A. Yes, sir.

Q. You also solicited for the American Federation of Labor around that time, didn't you?

A. Yes, sir.

Q. And, of course, on company time, while you were going up and down in the elevator and talking to people?

A. Yes. I argued with several department heads about this matter. That was a little of the discussion there.

Q. And you talked to other employees, didn't you, about the A. F. of L. and joining it?

A. Yes. [182]

Q. When was the first time that you thought that the Consolidated Seedsmen's Union was dominated by the company?

A. Since its beginning.

Q. You thought it right at the start?

A. Yes, sir.

Q. Did you make any report of that to the American Federation of Labor, or anyone connected with it? A. No.

Q. When is the first time you made any report of that, or your ideas in connection with it? [183]

A. The latter part of 1940.

Q. About the first time that you went to the meeting down at the A. F. of L. quarters?

A. No.

(Testimony of Eric G. Hulphers.)

Q. You didn't report it at that time?

A. Oh, no.

Q. That was on September 3rd, I think you testified, of 1940, that you had that meeting?

A. Do you mean when we signed our applications?

Q. Yes, at the A. F. of L. A. Yes.

Q. You didn't say anything about it at that time? A. No.

Q. By the way, at this meeting with the A. F. of L., did the A. F. of L. suggest to you to go back to the plant and ask for wage increases?

A. Yes. They said, "Maybe we can't help you out in this matter." They said, "We can't give you any promise to help you out with more wages, and all, being such a few of you. Try to get some wages among yourselves, because we can't make any promises on what we will get you."

Q. Was that all? A. Yes.

Q. Then you went back to the plant and you made contact with Mr. Meyberg, is that right? The three of you did? [184] A. Yes, sir.

Q. You didn't have any trouble seeing him?

A. No trouble.

Q. I see. Then a larger group of men met with him, was it the same evening? A. Yes.

Q. The evening of the same day? A. Yes.

Q. Then you had a general meeting at which time he took you to dinner and you ate all you could; is that right? A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Then there were some wage increases granted afterwards,—right?

A. Yes. In my speech to him I demanded that everybody come to a more standard wage scale, the men that were getting, oh, \$65.00 a month get increases up to the men that were getting \$90.00 a month.

Q. When he asked you who was the speaker for the group and pointed you out, why did you sit silent and tell him you didn't want to say anything?

A. Because the vice-president of the Consolidated Seedsmen's Union was there, and I figured it was his place to do the speaking and to carry on the meeting.

Q. Then you were meeting as members of the Consolidated Seedsmen's Union? Is that correct?

[185]

A. No, we weren't, because there were men there that were not members of the Consolidated Seedsmen's Union.

Q. Then why didn't you speak up for your group? You were the instigator of it, the one that started it, weren't you?

A. The majority of them was the Consolidated Seedsmen's Union.

Q. You didn't give any of your views at all at that time? A. No.

Q. Do you remember of the company posting a notice some time shortly after this meeting about the wage increases?

(Testimony of Eric G. Hulphers.)

A. It went from hand to hand. It was brought around by a department head.

Q. Do you remember such a notice?

A. A statement of increases of wages?

Q. Yes. A. Yes.

Q. What did it say?

A. Oh, it had a big list of names on it, the wages that the men had gotten and the wages that they were getting after we had this talk with Mr. Meyberg.

Q. Did you know that prior to this time there had been petitions circulated by various groups of employees for increases in wages? A. Yes.

Q. You knew that? [186] A. Yes.

Q. Ten per cent and 15 per cent increases?

A. Mr. Butterfield, Mr. Hill's stepson, had one out for ten per cent.

Q. Some of them were for 15 per cent, weren't they?

A. And the men in the warehouse up above, they had one out for a standard wage increase of \$110 a month.

Q. An increase of \$110 a month?

A. An increase to.

Trial Examiner Paradise: Excuse me for interrupting. Were these petitions for increases gotten out by various groups, or were they gotten up by the Consolidated?

The Witness: They were written and originated by two different men.

(Testimony of Eric G. Hulphers.)

Q. (By Mr. Watkins) Did you ever see any of them? A. Yes.

Q. Do you remember what it stated on them, any of the petitions you saw? A. Yes.

Q. What?

A. On one of them it said they wanted an increase of ten per cent, and on the other one it was a wage scale, giving a standard regular wage scale that the other warehouses around the community were giving, according to Mr. Hook, and he had this one and he showed it to me, and I signed it, and [187] that was for \$110 a month.

The one Mr. Butterfield had had ten per cent on it, but we figured for the men that were making \$65.00 a month and \$70.00, that wouldn't be enough increase.

Q. Were there any references on any of these petitions to the Consolidated Seedsmen's Union?

A. I don't remember.

Q. Now, going back again to this notice, I asked you if you remembered a notice posted by the company, signed by Mr. Meyberg, referring to the granting of the first increases. Do you remember such a notice?

A. Not in particular, no.

Q. You don't remember it being put out or posted, or what it said even?

A. I believe there was a notice on the clock that said we would get a wage increase throughout the building, in accordance with the demand for it.

(Testimony of Eric G. Hulphers.)

Q. And this was posted probably in October of 1940? A. Yes.

Q. You don't remember the substance of it, other than what you have testified to?

A. Yes, that's all.

Q. Do you remember whether or not the notice stated that the Consolidated Seedsmen's Union had made a request for increase in wages? [188]

A. No.

Q. You don't remember that ? A. No.

Q. Do you remember any statement in it about any distinction being made in the warehouse, and also in the Hill Street store? A. No.

Q. That was in October of 1940? A. Yes.

Q. Going back now to this Voorhees meeting at the plant in the warehouse, in August or September of 1937, I believe you testified at that time what was said by Mr. Voorhees. Now, how do you account for the fact that the A. F. of L. and the C. I. O. were put on the ballot in the election that was subsequently held?

A. Well, why do I think they put them on?

Q. Yes. How would that come about? What caused it?

A. Well, some of the people were afraid to view their facts on any unions, and some people didn't know much about the unions, knew very little about unions, their workings, and even hardly their name. Some people didn't know there existed two unions or much of their workings about it.

(Testimony of Eric G. Hulphers.)

Q. Well, they were aware, of course, of the A. F. of L., because the organizers were working on them for 30 days?

A. Yes. They knew about the A. F. of L.

Q. Did anybody make any mention at this meeting about the [189] C. I. O.? A. No.

Q. How do you account for the fact that the C. I. O. and the A. F. of L. were on that ballot?

A. Well, I believe that they wanted most of the votes to go, the majority of them to go for the house union, so they put on: See Mr. Meyberg, C. I. O. and A. F. of L., to pull the votes away from the A. F. of L.

Q. Suppose the A. F. of L. had not even been put on the ballot, wouldn't that have pulled them away better?

A. Well, they knew the people wouldn't vote.

[190]

Trial Examiner Paradise: As a matter of fact, there wasn't any place on the ballot for a negative vote, was there?

Mr. Watkins: No. There were four places.

Q. (By Mr. Watkins) Now, I believe you said you went over to the Hill Street meeting. When I speak of the Hill Street store meeting, that is the Hill Street retail store meeting held following the first Voorhees meeting in the plant in August or September of 1937? A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Then I believe you testified you did not attend the meeting. Is that correct?

A. That's right.

Q. Why not?

A. Because I was against organizing a house union.

Q. And that is the reason that you didn't attend it? [191]

A. That's right.

Q. In other words, you have been against this from the start, practically?

A. From the start I was against it, because I thought it was started by the company, and I said, "Being we had the union started at all, let's go in there and try to make something of the Consolidated Seedmen's Union, give them a start, and maybe this way we will get a wage increase, being the vote went that way. We would go—we would have anyone in the union as long as we could get enough money to live on, a monthly wage so we could satisfactorily live on it."

Q. Did you ever take an active part in the Consolidated Seedsmen's Union?

A. By attending the meetings, yes.

Q. Did you ever get in any office or on the directorate of that union?

A. Last fall I was refused the office of director and representative both. I refused them.

Q. About when was that?

A. That was September, 1940, about the——

(Testimony of Eric G. Hulphers.)

Q. Now then, on September 13, 1940, at a meeting of the Consolidated Seedsmen's Union, you asked for a secret ballot on disbanding, didn't you? [192]

The Witness: Yes.

Q. (By Mr. Watkins) All right. At the meeting prior to that, on August 20th, of the Consolidated Seedsmen's Union, didn't you make the statement in the meeting that if a raise was not forthcoming then the people would join another union?

A. That's right.

Q. Where were you when you signed the pre-organization agreement for the Consolidated Seedsmen's Union? That is, I believe, your signature was on Board's Exhibit 11-G?

A. I was on the shipping floor, and I signed it with several other members.

Q. Do you remember what time of day it was?

A. No.

Q. You don't remember whether it was in the morning or the afternoon? A. No.

Q. Mr. Hulphers, when is the first time that you reviewed [193] the testimony you have given here this morning since the events happened?

A. May I have that question?

Q. Strike it out, please. When was the first time that you discussed with anybody else the things that you have testified to here this morning, about the Voorhees meeting back in 1937 and these meetings with Mr. Meyberg, and all?

(Testimony of Eric G. Hulphers.)

A. I believe there was a little mention of it at the A.F. of L. office, when we signed our applications.

Q. On September 3, 1940? A. Yes.

Q. Some little discussion of it at that time?

A. Yes.

Q. When next after that?

A. At the Labor Board headquarters.

Q. How long ago?

A. Oh, November of 1940, as close as I recollect.

Q. November of 1940? A. Yes, sir. [194]

Redirect Examination

Q. (By Mr. Cobey) Now, Mr. Hulphers, I think you testified that during August, 1937, there were certain arguments between Mr. Sidebottom and Mr. Sage with Mr. Hatfield. Is that right? [195]

A. Yes.

Q. In your presence? A. Yes.

Q. Over the respective merits of the A.F. of L. and an inside union? A. Yes.

Q. Can you recall more specifically the circumstances of those arguments, when they occurred?

A. Yes. One day I came up on the fifth floor, and during that same day I seen Mr. Hatfield and Mr. Sidebottom by his desk, and another time at the steps leaving the fifth floor, on the way down to the lower floors.

Q. At what time of day?

A. I don't remember.

(Testimony of Eric G. Hulphers.)

Q. Do you remember what was said?

A. I caught—no, I don't remember what was said.

Q. Now, I think you stated that there were certain petitions for wage increases circulated or passed by Mr. Hook and Mr. Butterfield?

A. Yes.

Q. Do you happen to know when those petitions were presented to the management? First, I better ask you whether or not they were presented. Do you happen to know?

A. Yes, they were presented to Mr. Meyberg.

Q. Do you know when they were presented?

[196]

A. I believe they were presented in their first meeting.

Q. Of what?

A. That we had in his office at five o'clock.

Q. The meeting of all the employees that was held the same day——

A. Yes.

Q. ——after you and Montgomery and Loy had been in there?

A. Yes. [197]

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 13-A

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

GENERAL MEETING OF THE MEMBERS OF
CONSOLIDATED SEEDSMEN'S UNION,
INC.

The general meeting of the Members of the Consolidated Seedsmen's Union, Inc., was called to order by the President, Stanley Watson, at 8:35 P.M. on August 20th, 1940, at the Sons of Herman Hall, 120 E. 25th Street, Los Angeles, California.

The minutes of the meeting held July 16th were read. It was moved by Fern Wingrove and seconded by Bill Epperson that the minutes be accepted. Motion carried.

Eric Hulphers said floors 4, 5, and 6 were dissatisfied with the wages and wanted a petition circulated that would have a \$25.00 a week minimum wage on it. The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another Union.

President Watson said it would be no good to join another Union unless the majority joined.

Bill Epperson suggested that petitions be gotten up by the Directors of the different departments of all three branches and if a majority signed they could be taken to Mr. Meyberg.

(Testimony of Eric G. Hulphers.)

John Epperson said what we should have is a signed agreement. President Watson said we could not get it.

It was moved by Eric Hulphers and seconded by Bill Epperson that each department have a petition made up with wage scales, to be signed by the employees. Motion carried.

It was moved by John Epperson and seconded by Bill Epperson that President Watson go to the Labor Council and find out the wage scale and find out what departments would be taken care of by the other Unions. Motion carried.

Al Hook said that the election which should have taken place in his department last July had never been held. The President will see that the election is taken.

It was moved by John Epperson and seconded by Al Hook that all members of the Union receive benefits no matter how long they have been members. Motion carried.

It was moved by Emily Lilly and seconded by Darlene Boyce that the meeting be adjourned. Motion carried.

Secretary
(s) WATSON
President

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 13-B

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickie.

GENERAL MEETING OF THE MEMBERS OF
CONSOLIDATED SEEDSMEN'S UNION,
INC.

The general meeting of the Members of the Consolidated Seedsmen's Union, Inc., was called to order by the President, Stanley Watson, at 8:00 PM on September 13th, 1940, at the Sons of Herman Hall, 120 E 25th Street, Los Angeles, California.

The Secretary being absent the President appointed Violet Ashley to fill her place for the evening.

The minutes of the previous meeting were read and approved.

This special meeting was called to elect officers in Divisions 1, 3, and 7.

The Treasurer reported \$343.49 bank balance at end of August.

Eric Hulphers asked for secret ballot to disband this Union. Eric Hulphers made this a motion seconded by Claude Davis. Motion defeated.

Frank Miller made a motion that he be transferred to the warehouse division. Howard Taber seconded it. Motion carried.

Al Hook made a motion that the Warehouse women have a petition of their own. It was seconded by Mrs. Cook. Carried.

(Testimony of Eric G. Hulphers.)

Charles Fitzgerald is to talk with the Salesmen and get up a petition. Will let Viola know Tuesday, September 17th.

The other petitions will be for Office, Van Nuys, and Hill Street.

Union and Non-Union members went in to Manfred Meyberg to ask for more money. He is to have a meeting with the men September 17th.

There were two petitions reported circulating. Jack Butterfield made a motion to keep the one with the most names on it, seconded by Al Hook. Carried.

After a lengthy discussion Jack Butterfield made a motion that the election take place. Bill Epperson seconded it. Motion carried.

Division 3 (Dept., 4, 5, and 6)

Director

Al Hook	5
Jack Butterfield	3
Eric Hulphers	Declined
Al Freeman	Declined

Representative

Emily Lilly

Division 1 (Shipping Dept.)

Director

Jack Thrift	Declined
Bill Epperson	2

Representative

Howard Taber	3
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(Testimony of Eric G. Hulphers.)

Division 7 (Van Nuys)

Director

Amos Kays2

Representative

Louis Fenster2

Myrtle Butterfield made a motion that no-one leave the meeting before adjournment without addressing the chair and asking permission. Bobby Eaton seconded the motion and it carried.

There being no further business to be brought before this meeting, it was moved by Viola Gates and seconded by Jack Butterfield that the meeting adjourn. Motion carried.

(s) VIOLET ASHLEY

Acting Secretary

(s) WATSON

President

Q. (By Mr. Cobey) Mr. Hulphers, will you relate what contact you had with any representatives of the American Federation of Labor during the fall of 1937?

A. Solicitors for the A.F. of L. stopped me when I came out to lunch and asked if we were having labor trouble. And I said, "Yes, we are." I said, "I can't give you much more information on it."

And they said that they were organizing the ware-

(Testimony of Eric G. Hulphers.)

houses around that community then, and they wanted us in it too, because they understood that conditions there and around the warehouses down there were pretty bad as far as wages. That is about it. I was stopped twice, I believe.

Q. You were stopped twice? A. Yes.

Q. And that is all the contact you had with the A.F. of L. at that time?

A. Yes, that's all. [199]

Q. I understand that you didn't make application for membership in any union affiliated with the A.F. of L. prior to September 3, 1940?

A. That's right.

Mr. Watkins: He did or did not?

Mr. Cobey: He did not make application.

The Witness: No. That's right.

Q. (By Mr. Cobey) As a matter of fact, you never attended any meetings of the A.F. of L. prior to September, 1940? A. That's right.

Q. When, if at all, were you actually initiated into any union affiliated with the American Federation of Labor? A. Not until October of 1940.

Q. So your contact with any representatives of the A.F. of L. during 1937 were limited to the instances to which you just testified?

A. Yes. We were going up to the union if something wasn't done about increase in wages is all.

(Testimony of Eric G. Hulphers.)

Q. Are you referring now to 1937?

A. '37.

Q. Or 1940? A. 1937.

Q. 1937. But you didn't? A. I didn't.

[200]

Recross Examination

Q. (By Mr. Watkins) Now, I believe you mentioned that the petitions for wage increases were presented to Mr. Meyberg at the evening meeting with him, some time in September or October of 1940. Is that correct? [202]

A. We had two meetings in the evening. Which one?

Q. Well, you tell me which one.

A. I testified that I thought it was the first meeting, but it might have been the second meeting in the evening.

Q. All right. Who presented the petitions to him? Were they all presented by one person?

A. Mr. Butterfield, Mr. Hill's son.

Q. Presented the petitions? A. Yes.

Q. I see. What was his official capacity at that time with respect to the Consolidated Seedmen's Union? A. He was president.

Mr. Watkins: I think that is all.

Redirect Examination

Q. (By Mr. Cobey) Just one question: Mr. Butterfield was the son-in-law of Mr. Hill, not the son? A. The son-in-law.

(Testimony of Eric G. Hulphers.)

Mr. Watkins: Well, he volunteered that, Mr. Cobey.

Mr. Cobey: Pardon me. That is all.

Q. (By Trial Examiner Paradise) Just one question or two about Board's Exhibits 13-A and B. In Board's Exhibit 13-A, which is the minutes of the meeting of the Consolidated Seedsmen's Union of August 20, 1940, it is stated that you reported that the men on floors four, five and six were dissatisfied with the wages and they wanted a petition [203] circulated for a \$25 a week minimum wage. Do you recall having made such a report?

A. Yes, sir.

Q. Then it is further stated that Bill Epperson suggested that petitions be gotten up by the directors of the different departments of all three branches, and that if a majority signed they could be taken to Mr. Meyberg. Do you remember that?

A. Yes.

Q. And then it is stated that you, Eric Hulphers, moved that each department have a petition made up with wages scales, to be signed by each employee. Do you remember that? A. Yes.

Q. And that that motion was carried?

A. Yes.

Q. Do you recall that? A. Yes.

Q. Now, as a matter of fact, was there a petition gotten up for each department, pursuant to that motion? A. Not to my knowledge.

(Testimony of Eric G. Hulphers.)

Q. Well, do you recall what, if anything, was done to carry out the motion which, according to the minutes, was carried?

A. No. I have never seen anything.

Q. Now, did I understand you to testify that at this meeting in Mr. Meyberg's office on the 3rd of September that Mr. [204] Butterfield presented a petition?

A. He presented both petitions.

Q. What do you mean when you say "both petitions"?

A. The petition for the upper floor, and another petition that Mr. Butterfield had got a lot of women's names on and, oh, other names from the other parts of the building.

Q. And what, if anything, did he say when he presented the petitions? Do you remember?

A. He said, "Here are—I want to present you with these petitions, Mr. Meyberg," and he stepped up and laid them on his desk.

Q. Now, in Board's Exhibit 13-B, which is the minutes of the meeting of the Seedsmen's Union of September 13, 1940, it is stated that:

"There were two petitions reported circulating. Jack Butterfield made a motion to keep the one with the most names on it, seconded by Al Hook. Carried."

Now, do you know what petitions they refer to there?

A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Which ones are they?

A. One petition that was made up by the men on the upper floors, the men who were fighting for the wage increase, and the other one made up of the people that didn't want the wage increase.

Mr. Watkins: I didn't get that answer. May I have it [205] read?

Trial Examiner Paradise: Read it, Miss Reporter.

(The answer was read by the reporter.)

The Witness: I might add to that second answer: The people who didn't want a very large wage increase.

Q. (By Trial Examiner Paradise) Well, do you remember any of the details of these petitions?

A. Yes.

Q. Now, let's take the one that you say was for a wage increase. Who was circulating that petition?

A. The men on the sixth floor.

Q. Now, was that a different petition from the two that had been submitted to Mr. Meyberg on the 3rd of September?

A. That is the same petition.

Q. They were still getting signatures on it on September 13th?

A. Well, as I testified, that I didn't know which meeting it was handed to Mr. Meyberg, whether it was the first or second meeting. The second meeting was held on——

(Testimony of Eric G. Hulphers.)

Q. The second meeting was the dinner meeting?

A. Yes.

Q. That was the 17th of September, according to the minutes.

A. The 17th, that is right.

Q. And you don't know whether the petitions were handed to Mr. Meyberg on the 3rd or on the 17th? Is that correct?

A. That's right.

[206]

Q. Now, who was sponsoring the petition for a substantial wage increase?

A. The men on the upper floors, except Mr. Butterfield and Mr. Hatfield.

Q. Well, was that a petition of the Consolidated Union?

A. No.

Q. Or was it a petition——

A. It wasn't started as a petition of the Consolidated Seedsmen's Union. It was started because we wanted a petition that would read "our demands", and what we thought was a fair wage increase.

Q. And the petition which you say was for a smaller increase, do you know who was sponsoring that?

A. Mr. Butterfield.

Q. Well, was that just an individual enterprise on Mr. Butterfield's part, or was that action taken pursuant to some motion made at a union meeting, or what was it, if you know?

A. Well, I believe that was carried on outside of the union meetings. I noticed Fern Wingrove

(Testimony of Eric G. Hulphers.)

the same day conferring with Mr. Butterfield on the second floor, on the office floor, and there was someone else present, I don't remember now who they were on this petition. Then later on, why, several—there were two of the women there that told me about it, told me about the ballot being distributed, so I went up to see Mr. Butterfield. [207]

Q. You mean the petition?

A. The petition, yes. So I went up to Mr. Butterfield and asked him if it is true that he is circulating a petition for ten per cent, I said, when the men here are not getting a living wage here, and ten per cent will not bring much gain or bring any satisfaction as far as wages is concerned here, because some of the men are getting paid very poor.

So Mr. Butterfield at that time said, "I have got a job here," and he said, "I am not taking any chances, and this is my petition for ten per cent," and he said, "Let the other men worry about it."

Q. Well now, the minutes show that Mr. Butterfield made a motion to keep the petition with the most names on it?

A. Yes.

Q. And this motion was carried. Do you know whether there was any report made to the union as to which of the petitions had the most names on it?

A. No, sir.

Q. Do you know which of the petitions was kept and presented to Mr. Meyberg, or were both presented to Mr. Meyberg?

(Testimony of Eric G. Hulphers.)

A. No, I don't know.

Q. You don't know whether one or both, or which of the two was presented? Is that correct?

A. No, sir. [208]

Re-cross Examination

Q. (By Mr. Watkins) How much difference was there between this higher petition and the lower one you are talking about, in wage rates?

A. The lower one—I seen a petition passed for ten per cent, and the men were making \$70.00 a month and \$75.00 a month, some of them.

Q. Who was making \$75.00 a month? Can you name anybody?

A. Not in particular, no, because the men, most of the men, oh, were kind of ashamed to tell what they were making, and others were making more, and so they wouldn't tell what they were making, and so that is why we were asking for a standard wage scale.

Q. Then you don't know of anybody that was receiving the \$70.00 a month?

A. I believe that there is one——

Q. I say, do you know of anybody that was making \$70.00 a month? A. Yes.

Q. Who? [209] A. Mr. Howard Tabor.

Q. He was making \$70.00 a month at the time you are talking about? A. That's right.

Q. Are you sure of that? A. Yes.

(Testimony of Eric G. Hulphers.)

Q. How long had he been employed?

A. Oh, about a year.

Q. What is that?

A. About a year by then.

Q. What was he doing?

A. He was assistant shipping clerk. Mr. Miller was the shipping clerk for the receiving side, and he was assistant to Mr. Miller.

Q. How old a fellow is he?

A. His records on joining the army showed him to be 22 years old, I believe.

Q. When he joined the army?

A. Yes, sir. [210]

EARL E. SIDEBOTTOM,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and address, please, in a loud voice?

The Witness: Earl E. Sidebottom, E-a-r-l E. S-i-d-e-b-o-t-t-o-m; 942 Menlo Avenue, Los Angeles.

Q. (By Mr. Cobey) Mr. Sidebottom, you are employed at Germain's? A. Yes, sir.

(Testimony of Earl E. Sidebottom.)

Q. What position do you hold?

A. Secretary-treasurer.

Trial Examiner Paradise: I beg pardon?

The Witness: Secretary-treasurer.

Q. (By Mr. Cobey) How long have you held that position? A. Since June, 1918.

Q. Can you tell us what your duties are?

A. Well, largely the passing on of credit and the collection of money.

Q. Are you familiar, in a general way, with the duties of the persons employed at the warehouse?

A. Quite a few of them, yes, sir.

Q. And with the supervisory personnel of the company? A. Yes, sir. [211]

Q. Now, calling your attention to September 20, 1937, would you state what William S. Clark did at that time?

A. Mr. Clark at that time was working in the nursery department at the Hill Street retail store. Whether he had any particular authority there I couldn't say. He had been with us for a good many years and was thoroughly familiar with the nursery business.

Q. Could you state how long he had been employed at that time?

A. No, I couldn't but probably ten years.

Q. Mr. Sidebottom, I show you what purports to be a payroll record. I wonder whether that re-

(Testimony of Earl E. Sidebottom.)

freshes your recollection as to Mr. Clark's position on September 20, 1937.

(Handing document to witness.)

A. He evidently was in charge of the nursery department there.

Q. Could you state what position Mr. O. E. Johnson held during August and September of 1937?

A. Mr. O. E. Johnson was at that time assistant manager of the retail store, I am quite sure.

Q. Now, referring to this same period, Mr. Sidebottom, did you have a person in your employ, a person in the company's employ by the name of A. Stanley Williams?

A. Yes, sir.

Q. What did he do?

A. Well, he was my assistant in passing on credits and working [212] on collections, and he also worked on packet seed consignment accounts.

Q. Now, referring again to the same period, and as a matter of fact thereafter, do you know what Dorothy Turton did?

Trial Examiner Paradise: What is that name?

Mr. Cobey: Dorothy Turton, T-u-r-t-o-n.

The Witness: She was secretary to Mr. Schoenfeld.

Trial Examiner Paradise: Who is Mr. Schoenfeld?

The Witness: Vice-president of the company.

(Testimony of Earl E. Sidebottom.)

Q. (By Mr. Cobey) Now, you know Mrs. Betty Anderson? A. Yes, sir.

Q. Can you state what her duties were during the year 1940?

A. Filling orders in the packet seed department.

Q. Do you happen to know whether or not she was ever referred to as the head packer in that department?

A. Not that I know of. I think she was the only one.

Q. Was she the only one?

A. On that particular line of work, yes, sir.

Q. Do you happen to know when Erich Regan left the employ of the company?

A. Some time in the spring or summer of 1940.

[213]

Q. During certain seasons you have a mail order and radio department; is that correct?

A. Yes, sir.

Q. Approximately how long during the year is that department in existence?

A. About 60 or 90 days,—

Q. Sixty or 90 days?

A. —depending on what contracts we get.

Q. I see. What time of the year does that department function?

A. It is usually in the first quarter of the year, or starts in the first quarter of the year.

Q. Roughly during the planting season?

(Testimony of Earl E. Sidebottom.)

A. Yes, sir.

Q. Do you know how many persons are normally employed in that department?

A. It varies. I should say from 20 to 150.

Q. I see.

A. They are just temporary employees.

Q. And they are mostly women, are they not?

A. Mostly women, yes, sir; 95 per cent women.

Q. Now, as I understand it, the first floor of the warehouse is devoted to the shipping department. Is that right?

A. Shipping and receiving.

Q. Shipping and receiving? A. Yes, sir.

[215]

Q. And the second floor to the twist-ems department?

A. The second floor is mostly the office.

Q. The second floor is mostly the office. Where is the twist-ems department?

A. That is also on the second floor.

Q. Oh, that is also on the second floor. Do you know how many persons are employed normally in the twist-ems department?

A. That is a new department.

Q. When did it come in? Pardon me for interrupting you.

A. About a year ago. I think ten or a dozen employees.

Q. Would you explain to the Examiner what "twist-ems" are?

(Testimony of Earl E. Sidebottom.)

A. I happened to pick one up the other day. It is a little device made for the purpose of wrapping or tying up bushes of one kind of another to stakes, for the purpose of supporting them, and is used in place of string or raffia that used to be used for that purpose. It is made by running a piece of wire between two pieces of paper, which adhere through the application of hot tar. There is one of them, for instance (indicating). It is also used for the bunching of carrots. This is hardly an exhibit.

Q. Thank you. How many persons are normally employed in the office?

A. That depends on the season. It runs from eight or ten, I should say, to perhaps 20.

Q. Well, outside of the season during which the mail order [216] and radio department is in existence?

A. That is what I was referring to. That is a regular division of our business. The radio department is not.

Q. Which department is?

A. The office. Of course, that is a regular division of our business.

Q. And when it is operating at a time when the seasonal department is not operating, how many persons are normally employed in the office?

A. Oh, at the present time perhaps ten or a dozen; outside of the officials of the company, you understand.

(Testimony of Earl E. Sidebottom.)

Q. Yes, outside of the officials of the company. And approximately that same number would have been employed there or were employed there during the period here under discussion, that is, from the fall of 1937 to the present time? A. Yes, sir.

Q. Do certain of the officials of the company have their own private secretaries?

A. The vice-president, I believe, is the only one.

Q. Does Mr. Marks have a private secretary?

A. Yes, but Mr. Marks has only been down there for a very short period.

Q. I see. When did he come?

A. Perhaps two months ago.

Q. What does he do? [217]

A. He is the sales manager.

Q. Who is his secretary? What is her name?

A. Miss Roberts, I believe.

Q. Florence Roberts?

A. I don't know her first name. I would think it was Virginia. I am not positive about that.

Q. To the best of your knowledge, then only Mr. Marks and Mr. Schoenfeld have private secretaries?

A. Yes, sir.

Q. Mr. Meyberg does not?

A. No, sir. Mr. Meyberg has a stenographer who devotes her time almost entirely to one division of the work which is under Mr. Meyberg's direct supervision, and that is plant covers, sometimes called hot caps.

(Testimony of Earl E. Sidebottom.)

Q. What is her name?

A. Her name is South, Miss South.

Q. Now, what department do you have on the third floor of the warehouse?

A. That is the packet seed department.

Q. How many employees do you have in that department?

A. That varies according to the season. I wouldn't be able to say very closely on that.

Q. It doesn't run any steady figure?

A. No, sir.

Q. Is there anyone in charge of the third floor?

[218]

A. Mrs. Coahran is directly in charge. She works under Mr. Pieters' jurisdiction, however.

Q. Now, you understand, Mr. Sidebottom, don't you, that if there has been any change in the operation of these departments between August of 1937 and the present time, I would like you to indicate that?

A. No, I didn't get that, but there has been some change. As our business develops and we take on additional lines, there is naturally an increase in employment.

Q. Yes.

A. For instance, I think Miss South has come in during that period. I wouldn't be positive about that. She has been there about that length of time.

(Testimony of Earl E. Sidebottom.)

Q. I see.

A. Then this twist-ems stuff has come in.

Q. You said that has only been in there for a year or so? Is that right?

A. Yes, sir. Then we have also got some spray guns, which have come in recently.

Q. I see. What department, if any, occupies the fourth floor of the warehouse?

A. It is known as the broken package department, consisting largely of ounces—oh, small quantities of seed; I think over four ounces and on up to 50 pounds, or something like that, and the handling of what is called package goods, such [219] as insecticides and spray materials, things of that kind.

Q. Under whose supervision is that department, do you know?

A. That is under Mr. Hill.

Q. Under Mr. Hill. That is the Mr. Hill who has been referred to here as the traffic manager; is that right?

A. Yes, sir.

Q. You did have another Hill in your employ, didn't you?

A. Not that I know of.

Q. Did you have a Charles J. Hill?

A. It seems to me there was a Charles J. Hill there for a while. I think he was a truck driver, or something of that kind. He wasn't there very long, as I remember it.

Q. Now, that brings us up to the fifth floor. What is done on the fifth floor of the warehouse?

(Testimony of Earl E. Sidebottom.)

A. On the fifth floor they handle full sack goods; that is, 100 pounds, and in the case of some merchandise it runs up to 220. They are engaged mostly in filling orders for seeds in those quantities.

Q. Pardon me for back-tracking. How many employees do you normally have on the fourth floor?

A. On the fourth floor?

Q. Yes.

A. Well, in this season of the year normally about four or five. During the summer time normally about three. [220]

Q. (By Mr. Cobey) Mr. Sidebottom, do you recall an employee by the name of Eleanor Newmark?

A. Eleanor——

Q. Newmark? A. Yes, sir.

Q. What did she do down there?

A. She was the clerk at the window.

Q. A receptionist?

A. No. She took care of the clerical work, stenographer for Mr. Marks at that time and anybody else that had letters to write, and she took in the cash at the end of the day and made up the deposit.

Q. You are referring to that time, to August and September, 1937?

A. Yes. She left there, I think, in January, 1940, to get married. [222]

Q. What was Mr. Marks doing at that time? He didn't hold his present position, did he?

(Testimony of Earl E. Sidebottom.)

A. No. He was manager at the Hill Street retail store.

Q. I see. Now, I think we have got you up to the fifth floor of the warehouse. How many employees are normally employed on the fifth floor?

A. Oh, anywhere from five to ten or twelve, perhaps.

Q. I see. It varies? A. It varies.

Q. What determines the number of employees?

A. Well, the season of the year, the amount of work to be done. You see, on that floor they clean the seeds that come in there, and from then on for several months they are quite busy.

Q. Under whose supervision does that floor work? A. Mr. Gates.

Q. Mr. Gates. What operations are carried on on the sixth floor of the warehouse?

A. Cleaning seeds and stacking it up in stacks until it is ordered down.

Q. Are the mills located on that floor?

A. Yes, sir.

Q. How many persons work on that floor?

A. How many persons?

Q. Yes. [223]

A. Anywhere from five to a dozen, depending on the season.

Q. Five to a dozen, depending on the season. Under whose supervision do they work?

A. Mr. Gates has control of that floor too.

(Testimony of Earl E. Sidebottom.)

Did I understand you first to ask about the sixth floor or the fifth floor?

Q. Well, I think I have asked you about both floors.

A. Yes. The fifth floor usually had one or two men; sometimes three.

Q. Oh, I see. So that the average number of employees there is just about two or three men?

A. Yes.

Q. And on the sixth floor it varies from five to ten, depending on the activities?

A. On the sixth floor it varies. On the sixth floor they also have two or three women, sometimes more than that, cleaning seeds and picking them.

Q. I see. Now, there is a nursery out at Van Nuys, isn't there?

A. Yes, sir.

Q. Who is in charge of that?

A. Mr. Clark at the present time.

Q. How long has he been in that position? That is Mr. William S. Clark?

A. W. S. Clark. I think he has been out there for two years [224] at the present time.

Q. And the Main Street store of the company is no longer in operation?

A. No longer in operation.

Q. When did that close down?

A. About three years ago, I think. Time passes, and you don't pay much attention to those things.

(Testimony of Earl E. Sidebottom.)

Q. Do you recall whether or not it was along about the start of 1939?

A. It was in May of either 1938 or '39. I think it was 1938. I think it was before 1939, although it might not have been. I am not positive.

Cross Examination

Q. (By Mr. Watkins) Just one question: You heard Mr. Hulphers testify about a Mr. Tabor's wage rate? A. Yes, sir.

Q. Can you tell me what Mr. Tabor was receiving on September 5th and 15th, 1940?

A. I understand he was getting \$90 a month on September 5th, and the 15th he was raised to \$100.

Redirect Examination [225]

Q. (By Trial Examiner Paradise) I just want to ask you a few questions about Mr. Frauenberger. What is his position?

A. Well, Mr. Frauenberger until recently was the city shipping clerk. By that I mean that he checked the loads onto the drivers' trucks, and he sometimes answered complaints over the telephone from customers as to whether deliveries had been made, and why not, and so forth.

Q. You say until recently that was his job. How long had it been his job, until recently?

A. Oh, for several years; five or six years, I judge.

(Testimony of Earl E. Sidebottom.)

Q. And what change took place in his job recently? [226]

A. Well, awhile back he was transferred onto the receiving desk in the same department.

Q. When was that?

A. I should say, roughly, two or three months ago.

Q. What does he do at the receiving desk?

A. Merchandise that comes in is checked in by him, and he makes a receiving record, showing the receipt of the goods, and then it is turned over to the elevator man to be taken to the proper department upstairs. I think possibly he also makes out bills of lading for outgoing shipments that go by rail or steamship, and sees to the dispatch of those items.

Q. Who was his superior when he was the City shipping clerk?

A. Mr. Hill at all times.

Q. Mr. Hill is now his superior officer?

A. Yes, sir.

Q. Now, did Mr. Frauenberger give orders to the people in the shipping department, that is, as City shipping clerk?

A. Well, he directed the men as to what their work was—what work they were supposed to do. He distributed the work to the different men, so far as that is concerned. You wouldn't call it giving orders. Beyond that, I don't know.

(Testimony of Earl E. Sidebottom.)

Q. To which men did he distribute work?

A. The truck drivers. I think he also on occasion called up the fourth and fifth floors regarding merchandise that was to be delivered and that hadn't come down, asked them where it [227] was, and tried to facilitate the work in that regard.

Q. Did Mr. Frauenberger do any manual work himself, or did he just keep records and that sort of thing?

A. No, he did manual work. He worked with the merchandise, helped load the trucks.

Q. Did he have the authority to reprimand truck drivers for not doing their work properly?

A. I don't think so; any more than one employee always trying more or less to bawl out another fellow, you know.

Q. If he told a truck driver to do certain work and the work wasn't done, what would be the procedure in a case like that?

A. I think if he made a point of it, all he could do was to refer it to Mr. Hill.

Q. Was Mr. Hill personally present on the shipping floor?

A. Most of the time, yes, sir.

Q. And was Mr. Hill's authority delegated to anybody in his absence?

A. Not that I know of.

Q. Who would take charge if Mr. Hill weren't down, if anyone?

(Testimony of Earl E. Sidebottom.)

A. Well, we usually went to Mr. Miller. When Mr. Hill wasn't around, we usually went to Mr. Miller to find out what was the situation, if anything, but as far as taking authority, we looked to Mr. Hill.

Q. And who is Mr. Miller?

A. Mr. Miller at that time was the receiving clerk. He has [228] since been ill and been in the hospital. Now, he is still home, still sick.

Q. Is that the job that Mr. Frauenberger now has,—receiving clerk? A. Yes, sir.

ROY YOAKUM,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Roy Yoakum.

Trial Examiner Paradise: Roy——

The Witness: Yoakum, Y-o-a-k-u-m; 1063 South Oxford Avenue, Los Angeles.

Q. (By Mr. Cobey) Mr. Yoakum, are you now employed at Germain's? A. Yes, sir. [229]

Q. How long have you been employed there?

(Testimony of Roy Yoakum.)

A. About—between four and five years.

Q. Would you state, very briefly, what your employment history has been there; in other words, what jobs you have held?

A. Well, when I started it was just general labor, piling sacks, and that line of stuff.

Trial Examiner Paradise: Will you keep your voice up, please, Mr. Yoakum?

The Witness: Yes.

Q. (By Mr. Cobey) Under whom were you working at that time? A. Mr. Gates.

Q. In the warehouse? A. Yes, sir.

Q. How long did you have that job?

A. Oh, about, somewheres around nine months, I guess.

Q. Then what did you do?

A. I ran the elevator.

Q. When did you go to work there?

A. On the elevator there?

Q. No, I meant when did you first go to work at Germain's? You said four or five years ago. Can you place it more definitely?

A. It was about the middle of '36. [230]

Q. How long were you on the elevator? That is, elevator operator, is that what you were?

A. Yes, sir. About three or four months.

Q. Under whose supervision did you work at that time? A. Mr. Gates.

Q. Then what did you do?

(Testimony of Roy Yoakum.)

A. I went to piling sacks.

Q. And again under Mr. Gates?

A. Yes, sir.

Q. Is that type of work, sack piling and sack sewing, known as the bull gang? A. Yes, sir.

Q. Have you remained in that work since then?

A. Well, I have worked on the shipping floor some, just——

Q. Filled in?

A. Just helped, yes, sir.

Q. But at the present time you are still a member of the bull gang? Is that right?

A. Well, at this time now, I guess I would be considered a packer on the fourth floor.

Q. I see. Under whom do you work?

A. Mr. Nesbit.

Q. I see. How long have you been working up there? A. Oh, something like a month.

Q. But up to a month ago you were still doing general labor [231] in the bull gang?

A. Well, I was working on the shipping floor at that time, just doing first one thing and then another; unloading a truck or checking it in, you know, something like that.

Q. Do you know Mr. Allan Hook?

A. Yes, sir.

Q. Now, during your working experience down there, have you ever worked under Mr. Hook?

(Testimony of Roy Yoakum.)

A. Yes.

Q. When did you work under Mr. Hook?

A. When I was in the bull gang.

Q. What did Mr. Hook do in connection with the bull gang?

A. Well, he was just—took orders from Mr. Gates and relayed them to us.

Q. Did he assign your work when you were working on the bull gang? In other words, tell you what to do?

A. Yes.

Q. How many men were employed in the bull gang?

A. Oh, at times there was 12, and there was times that there wasn't that many, depending on the season.

Q. Now, you say that for the last month you have worked for Mr. Nesbit on the fourth floor?

A. Yes, sir.

Q. Are your assignments of work given by Mr. Nesbit?

A. Yes, sir. [232]

Q. How many people are up there now?

A. There is five.

Q. Including yourself and Mr. Nesbit?

A. Yes, sir.

Trial Examiner Paradise: When you say that you take orders from him, what sort of orders do you take?

The Witness: Well, if there is something in stock

(Testimony of Roy Yoakum.)

he wants piled away, or some order he wants packed, then I pack it.

Trial Examiner Paradise: Anything else?

The Witness: That is about the only thing I do, is pack or pile stock away.

Q. (By Mr. Cobey) How much money were you getting when you worked in the bull gang under Mr. Hook?

Trial Examiner Paradise: I will permit him to answer. [233]

The Witness: Well, I made 30 cents an hour for about the—I believe it was for about the first nine months, I guess. Then I was put on what they call the monthly base. It was \$65 a month.

Q. (By Mr. Cobey) You made \$65 a month the entire time you worked on the bull gang?

A. I did get one increase and raise, which raised me to \$70.

Q. \$70 is the most that you made? \$70 a month is the most you made when you worked on the bull gang?

A. No. \$85 was the most I ever made in the bull gang.

Q. Now, how much do you get now?

A. \$100 a month.

Q. \$100. Now, Mr. Yoakum, calling your attention to the period of August and September, 1937, do you recall whether or not there were any meetings of employees in the shipping room of the warehouse? A. There was.

(Testimony of Roy Yoakum.)

Q. (By Mr. Cobey) Do you know when the first of those meetings occurred?

A. How they occurred?

Q. No, when the first of those meetings occurred? Can you [234] place it at all?

A. No, I can't remember the exact date. It was some time in August.

Q. That's August, 1937. Let's take the first meeting. How were you notified of that meeting?

A. There was someone came around through the building and told me about it. I can't remember who it was.

Q. Do you recall at what time of day the first meeting was held?

A. It was at noon time.

Q. Noon time? A. Yes.

Q. Was it during or after working hours?

A. After working hours.

Q. Do you remember how many employees were at this meeting?

A. Oh, there was about, between fifteen and twenty, I would judge. [235]

Q. (By Mr. Cobey) This will be in the nature of a leading question. Will you state what Mr. Sage said at that meeting, to the best of your recollection?

A. Well, he said that he was—that he had heard that we were dissatisfied with the money that we were making and he was willing to help all that he could in order to get something going, to where

(Testimony of Roy Yoakum.)

we could all cooperate and not be any arguments, or anything like that, and he finally mentioned the fact that he understood there were a lot of independent unions in the city, and he understood they were doing pretty nicely, that he felt that it would be a pretty good thing if we did something in that line. Then that is kind of the way it went. So I think that he did mention the fact that if we joined an outside union, why, the company also had plenty of money, and they could close the doors down, and in order to keep the place going, maybe we had better, you know, have an independent union.

Q. That is the extent of your recollection as to what he said?

A. That is just about it.

Q. He was the only speaker at this meeting, was he?

A. Yes. However, there was some fellows that asked questions and he answered them. However, I don't remember the questions or the answers.

Q. Now, do you recall whether or not there were any other [236] meetings held in this shipping room of the warehouse?

A. Yes, there was another one held, I judge, about a week later.

Q. Will you tell us what happened at that meeting?

A. Well, at that he had got the attorney there. His name was Mr. Voorhees.

Q. Who is "he"?

(Testimony of Roy Yoakum.)

A. Mr. Sage. Well, I suppose he did anyway. He introduced him to us and——

Mr. Cobey: Pardon me. The first part of that answer may go out.

The Witness: (Continuing) —and there was a fellow from Cudahy. I think maybe he might have been the secretary of the Cudahy Independent Union, and they told us——

Q. (By Mr. Cobey) Just tell us what you know to your own personal knowledge. Pardon me for interrupting you. Go ahead. Just tell us what happened at that meeting, that you recall. I think you testified that Mr. Sage introduced Mr. Voorhees. Do you recall anything else?

A. No. He just went on with the meeting. He told——

Q. Do you recall anything of what Mr. Voorhees said?

A. He said that he drew up the by-laws and constitutions for the Cudahy Independent Union, and he would also do the same for us if we would give him the information to do so.

Q. How long did this meeting last, do you recall? [237]

A. About 30 minutes, I would judge.

Trial Examiner Paradise: Mr. Witness, will you please speak up loud, so that everybody can hear it?

The Witness: Yes.

Q. (By Mr. Cobey) During this same period

(Testimony of Roy Yoakum.)

do you recall whether or not an election was held out at the warehouse?

A. There was an election, yes, sir.

Q. Do you remember about when it happened?

A. Just after the second meeting, I think.

Q. That is the second meeting in the warehouse?

A. Yes, sir.

Q. Will you tell us what you know about the election?

A. Well, Mr. Hook—all I know about it is Mr. Hook, he brought a box with some ballots. He gave me one. I marked my ballot and put it in the box.

Q. Mr. Yoakum, I show you Board's Exhibit 8. Is this the type of ballot Mr. Hook handed you?

A. Yes, sir.

Q. Do you recall what time of day it was that Mr. Hook gave you this ballot?

A. It was about the middle of the morning.

Q. While you were working? A. Yes, sir.

Q. He brought it around to you?

A. Yes, sir. [238]

Q. And you then took it over and put it in the box? A. He had the box in his hand.

Q. Oh, I see.

A. I dropped it in the box.

Q. Was that the extent of your participation in the election? A. That's right, sir.

Q. How were you notified of the results of the election?

(Testimony of Roy Yoakum.)

A. I was on the sixth floor, and I just came down the aisle. There was three or four fellows there. I can't remember anybody that was there only Mr. Hook, and he had the results on a piece of paper then. That is the first that I knew about it.

Q. Prior to your voting in the election, had you been given any notice, that is, had you been informed that an election was going to take place?

A. I didn't get that.

Q. Would you read the question, please?

(The question was read.)

Q. In other words—pardon me—in other words, prior to your voting in the election, had anybody told you that there was going to be an election?

A. Yes. In the second meeting Mr. Sage says that there would be an election to determine whether we wanted to go into the union or not.

Q. Do you recall whether or not at that meeting Mr. Sage said any more about the election than that? [239]

A. No, I don't remember.

Q. Did you attend the meeting at the Hill Street store?

A. No, sir.

Q. (By Mr. Cobey) Now, Mr. Yoakum, I hand you Board's Exhibit 11-E, and I call your attention to the fact that there is a signature on there, "Roy O. Yoakum." Can you tell us whether or not that is your signature?

A. It is, sir.

Q. Can you recall the circumstances under which you signed Board's Exhibit 11-E?

(Testimony of Roy Yoakum.)

A. That we were willing to go into this Independent Union. [240]

Q. (By Mr. Cobey) Are you at the present time a member of the Consolidated Seedsmen's Union?

A. I am.

Q. Have you attended any meetings of that organization? A. About six, I judge, all told.

Q. Do you recall the dates of the meetings you attended?

A. Not exactly. I was at the first meeting—about the first two or three meetings. Then I didn't go to any more until, well, they were just scattered out. [241]

Q. Just here and there? A. Yes.

Q. Have you or have you not personally observed at any time any solicitation for membership in the Consolidated Seedsmen's Union?

A. No, sir.

Q. Now, you have paid your dues in the Consolidated Seedsmen's Union, haven't you, regularly?

A. Yes, sir.

Q. Will you tell us when and where you paid your dues?

A. The usual thing, it was in the mornings; I judge about the middle of the mornings, when I usually paid my dues, on the average.

Q. How were they collected from you?

A. Well, the representative just came around with the book, and I paid my dues, and he gave me a receipt.

(Testimony of Roy Yoakum.)

Q. You don't recall any specific occasion, do you, as to which you could give us the details as to the persons present or the person who collected the dues from you?

A. Well, Allan Hook, he collected dues for a while; and Emily Lilly, she collected the dues, collects the dues now. [242]

Q. (By Mr. Cobey) How were you notified of the general membership meetings of the Consolidated Seedsmen's Union?

A. There was a bulletin on the time clock.

Q. Mr. Yoakum, are you at the present time a member of the union affiliated with the American Federation of Labor? A. Yes, sir.

Q. That is the Grocery Warehousemen's Union?

A. Yes, sir.

Q. Do you recall when you joined?

A. It was September 20th when I paid my initiation fees.

Q. Do you recall whether or not you made application for membership prior——

A. I did. September 5th.

Q. 1940? A. Yes, sir.

Q. Then you were initiated on September 20th, did you say? Or on what day, 1940?

A. Yes, sir. [243]

Q. Now, Mr. Yoakum, you were in the court room during the direct examination of Mr. Hulphers, were you not? A. Yes, sir.

(Testimony of Roy Yoakum.)

Q. Do you recall that he testified as to the meeting held, according to his testimony, on September 3rd in Mr. Meyberg's office, just after quitting time? A. There was.

Q. Were you present at such a meeting?

A. Yes, sir.

Q. Do you recall what happened at that meeting?

A. Well, there was about 20 fellows, I guess, maybe more, and I understand that there was some of the guys had been in to see Mr. Meyberg about getting more money.

Q. Well, don't tell us what you understand. Just tell us what you actually saw and heard in that meeting; in other words, what was said and what happened.

A. Well, when we all got in Mr. Meyberg asked did we have a spokesman. We said, no. And he also asked Mr. Hulphers if he wouldn't be the spokesman, and he said, "No."

Then he told us that he had been intending to give us more money, but he had been so busy that he hadn't got to it yet.

Q. Do you have any recollection as to the exact date upon which this meeting occurred?

A. No. It was about that time, but I don't—

[244]

Q. Do you recall whether or not it was before or after your making application for membership in the Grocery Warehousemen's Union?

(Testimony of Roy Yoakum.)

A. I don't remember that.

Q. Is that the extent of your recollection as to what happened at that meeting?

A. That's right, sir.

Q. Now, did you attend the dinner at the Terminal Club? A. Yes, sir.

Q. And were you present at the meeting in the office after that dinner? A. Yes, sir.

Q. How many people were at that meeting?

A. Oh, there were 17, or maybe 20.

Q. Can you tell us what happened at that meeting? A. Well, we just had lunch, that's all.

Q. I mean—I am not referring to the dinner at the Terminal Club. I am referring to the meeting that occurred after the dinner. Were you present at that meeting? A. Yes, sir.

Q. What happened there?

A. Well, Mr. Meyberg said that before we made any step to, well, join any unions, or anything, to give him a chance to see if he couldn't cooperate and meet our demands, and the same thing, that he was intending to give us a raise, but he hadn't [245] got to it on account of being so busy.

Q. Was Mr. Schoenfeld there?

A. Yes, sir.

Q. Is that all you recall in regard to that meeting? A. That's right, sir.

Q. Now, do you know whether or not during this period as to which you have just been testify-

(Testimony of Roy Yoakum.)

ing there were any petitions circulated among the employees in regard to wage increases?

A. Yes, there were.

Q. Will you tell us what you know about those petitions?

A. Well, all I know, there was one petition that was brought to me. It was for \$110 a month. I signed it.

Q. Who brought it to you?

A. I am not sure, but I think Mr. Hook did.

[246]

Cross Examination

Q. (By Mr. Watkins) Do I understand, Mr. Yoakum, that at this first meeting, at which Mr. Voorhees was present, in the warehouse, it was Mr. Sage who suggested that an election would be held? Is that correct?

A. Mr. Voorhees wasn't at the first meeting.

Q. I am speaking now of the first meeting at the plant at which Mr. Voorhees was present.

A. He wasn't present at the first meeting at the warehouse. [247]

Q. No. All right. To clarify it, I will ask you: At the first meeting Mr. Voorhees was not present; that is correct, is it not? It was Mr. Sage and a group of men?

A. That's right, sir.

Q. Then you had a meeting following that, at which Mr. Voorhees was present,—correct?

A. Yes, sir.

(Testimony of Roy Yoakum.)

Q. Now, at that meeting the suggestion was made that an election be held to determine what the men wanted? Correct? A. Yes.

Q. And that suggestion was made by Mr. Sage? Correct? A. Yes.

Q. All right. Now, then, did Mr. Sage immediately after that leave the meeting?

A. He didn't leave until the meeting was over.

Q. Mr. Sage was present throughout that entire meeting; is that correct? A. That's right.

Q. Mr. Gates and Mr. Hill were present at the start of the meeting? Is that right.

A. That's right.

Q. And they left shortly after the meeting started? A. Yes, sir.

Q. I understood you to testify that you worked in the bull gang under Mr. Hook Is that right?

[248]

A. That's right.

Q. Did Mr. Hook also work with you and the other men in the bull gang, work with his hands?

A. Yes.

Q. What about Mr. Nesbit? Does he also work with his hands along with the other men?

A. Yes.

Q. I believe you testified that Mr. Sage at either the first or second meeting in the plant made some comment about an outside union coming in there. Do you remember at which meeting that was?

(Testimony of Roy Yoakum.)

A. I don't remember saying anything that he said about an outside union coming in.

Q. All right. Now, a little differently then: Mr. Sage didn't talk to you at the second meeting at the plant, did he, when Mr. Voorhees was present, other than to introduce Mr. Voorhees?

A. I don't remember.

Q. All right. At the first meeting at the plant he did talk to you? Correct? A. Yes, sir.

Q. State what he said.

A. He said that he understood there were a lot of us dissatisfied with the money we were getting; he would also like to work out some plan where we could all agree, and he also [249] said about knowing several places in town that had independent unions, and would try and work one out there.

Q. Is that all you can remember about it?

A. That's about all.

Q. Did he say anything about the plant shutting down operations, or anything of that kind?

A. He did.

Q. What did he say?

A. He said that, after all, he felt it was our place to keep the place going, the same as the company, because they had plenty of money and they could close their doors any time, and it was only our duty, in order to keep it going, so that we would have a job.

Q. Is that all he said about that matter?

(Testimony of Roy Yoakum.)

A. That's all I remember. [250]

Q. Do you remember anyone at the second meeting, at which Voorhees was present, having anything to say, besides Mr. Voorhees and Mr. Sage?

A. Mr. Hill and Mr. Gates asked whether a man that had the right to hire and fire could belong to the union. They were told, "No."

Q. That was just prior to the time they left the meeting?

A. That's right, sir.

Q. Did anybody else have anything to say at that meeting?

A. There was several of the fellows asking questions, but I don't remember them.

Q. You don't remember the substance of any of them?

A. No, sir.

Q. Had anyone approached you, prior to this first meeting with Mr. Sage at the plant, about joining the American Federation of Labor? [251]

A. There was some talk going on through the plant there about it.

Q. Did anyone talk to you about it?

A. Not particularly me. They did talk between each other around.

Q. Had you been in on any of the discussions concerning joining the American Federation of Labor?

A. No, sir.

Q. Where did you hear the discussions?

A. On the job. [252]

WILLIAM A. EPPERSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please, and spell your last name.

The Witness: William A. Epperson, E-p-p-e-r-s-o-n; 231 East 75th Street, Los Angeles.

Q. (By Mr. Cobey) Now, Mr. Epperson, you are employed at Germain's? A. Yes, sir.

Q. How long have you been employed there?

A. Five years this May.

Q. What sort of work have you done?

A. Driving truck.

Q. You are a member of the Consolidated Seeds-men's Union? A. Yes, sir. [253]

Q. You have been an officer of that Union?

A. Yes, sir.

Q. What positions have you held?

A. Representative and director, both.

Q. For the shipping department? A. Yes.

Q. Now, as a representative, it was your duty to collect dues; is that right? A. Yes, sir.

Q. Will you tell us how you went about that?

A. Well, we had a little book there, and I used to go in the office there, where the shipping clerk was, and the boys would come by and pay me the money, and I would put it down in the book, you

(Testimony of William A. Epperson.)

know, write it down "Paid", so they could see, and that's about all there was to it. That was about the only chance I had, because I wasn't around there in the noon hour or after work.

Q. Because of your driving a truck?

A. Yes.

Q. And it was because of your work that you left the book there in the shipping clerk's office, or took the payments there? A. Yes, sir.

Q. Have you participated in any bargaining conferences with the management? [254]

A. Well, yes.

Q. Did any of those conferences occur during working hours? A. No. [255]

Q. Now, as a director of the Consolidated Seedsmen's Union, how were you informed of the meetings of the board of directors?

A. From the secretary.

Q. You mean she came around to you and told you a meeting was going to be held?

A. No. I am pretty sure she sent a note in an envelope down to my department, and I would get it when I come in.

Mr. Cobey: That is all.

Cross Examination

Q. (By Mr. Watkins) You never got permission from the management to collect dues in the manner you have suggested, did you? [256]

A. No.

BLANCHE EATON,

a witness called by and on behalf of the National Labor Relations Board, being duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Blanche Eaton, E-a-t-o-n; 506 North New Hampshire.

Trial Examiner Paradise: Will you give me that again, Miss Reporter?

(The answer was read by the reporter.)

Q. (By Mr. Cobey) Mrs. Eaton, you are employed by Germain's? A. Yes, sir.

Q. How long have you been so employed?

A. Approximately six years.

Q. What do you do?

A. Assistant to Miss Court, the auditor. [257]

Q. (By Mr. Cobey) You are a member of the Consolidated Seedsmen's Union? A. Yes, sir.

Q. Have you ever been an officer of that union?

A. Yes, sir.

Q. Can you tell us what offices you held?

A. Director.

Q. Were you ever secretary of the union?

A. Yes, sir.

Q. Do you recall your term of office as secretary? A. No. [258]

(Testimony of Blanche Eaton.)

Mr. Watkins: Isn't that in the exhibit?

Mr. Cobey: Yes, I think it is.

Q. (By Mr. Cobey) I think I can refresh your recollection on that.

(Handing document to witness.)

A. Yes, sir.

Q. What was your term of office?

A. You mean the time?

Q. Yes.

A. 1937 and '38, director; and secretary '38 and '39, I believe.

Q. As a matter of fact, you were director from September 20, 1937 to November 2, 1937, when Fern Wingrove took your place as director? Is that not right? A. Yes, sir.

Q. And then you were secretary from November 1, 1938 to April 4, 1939? Is that not right?

A. Yes, sir.

Q. Now, as secretary, you were responsible for notifying the membership of the general meetings, and also the Board of Directors of the meetings of the Board of Directors, were you not?

A. Yes, sir.

Q. How did you do that?

A. By a notice on the time clock. [259]

Q. For the general membership? A. Yes.

Q. How about the board of directors' meeting?

A. I believe by the same method and also personal contact.

(Testimony of Blanche Eaton.)

Q. In other words, you went around personally and told them about the meeting?

A. Yes, sir.

Q. Did that occur during working hours or after working hours?

A. No, out of working hours, at noon.

Q. To the best of your recollection, you never notified a director of a meeting during working hours?

A. No, sir.

Q. And your only form of notice to them was either by posting a notice or by personally contacting them?

A. Yes, sir.

Cross Examination

Q. (By Mr. Watkins) Did you ever receive any special permission from the management to post those notices on the time clock?

A. No, sir.

Q. Did you ever see any other notices on or around the time clock, in the same places that these notices were put, other than of the Seedsmen's Union membership meetings? [260]

A. I don't remember.

Q. Do you remember notices of deaths or flowers, or things of that kind, being there also?

A. Yes, sir.

Q. Other notices of that character?

A. Yes, sir.

VIOLET ASHLEY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Violet Ashley, A-s-h-l-e-y; 10201½ West 42nd Street.

Trial Examiner Paradise: Now Miss Ashley, will you please keep your voice up so that everybody can hear you?

Q. (By Mr. Cobey) Miss Ashley, you are employed down at Germain's?

A. Yes, sir. [261]

Q. What do you do down there?

A. I am secretary to Mr. Schoenfeld.

Q. How long have you been his secretary?

A. About a year and a half.

Q. That is, you became his secretary in the latter part of 1939; is that correct?

A. Yes, after Miss Turton left.

Q. After Miss Turton left? A. Yes.

Q. That is, you succeeded Miss Turton?

A. That's right.

Q. Now, you have held office in the Consolidated Seedsmen's Union, have you not? A. Yes, sir.

Q. I understand that you were the secretary of the Consolidated Seedsmen's Union from February

(Testimony of Violet Ashley.)

9, 1938 to November 1, 1938, and that you were a representative for the office from August 8, 1938 to January 1, 1941. Does that accord with your recollection? A. I think so.

Q. Now, as secretary, you notified the general membership of the general membership meetings by posting notices on the time clock, did you not?

A. Yes, sir.

Q. How did you notify the Board of Directors of their meet- [262] ings,

A. Well, I believe I did it the same way, or sometimes just by word of mouth, or called the Hill Street store and Van Nuys by 'phone.

Q. By calling them over the telephone?

A. Yes.

Q. Called the proper employees?

A. I think I did it both ways.

Q. Do you recall whether or not you ever did it during working hours? A. Yes, I believe so.

Q. As secretary, you were responsible for the minutes of the organization. Did you keep any other files? Did you keep the general files, the correspondence and what not?

A. Yes. I had that in a box.

Q. Where did you keep those files and the minutes?

A. I believe Miss Gates had them part of the time.

Q. They were in her custody? A. Yes.

(Testimony of Violet Ashley.)

Q. Do you know where she kept them?

A. No, I don't.

Q. It was your job to type up the minutes of the meetings?

A. Yes, sir.

Q. When did you do that?

A. I did it at home. I had a typewriter at home.

[263]

Q. You used your typewriter at home?

A. Yes, sir.

Cross Examination

Q. (By Mr. Watkins) Did you ever get permission from the management to post the notices on or around the time clock?

A. Why, I don't recall. I think they had always been doing that. I did it myself.

Q. I see. You saw other notices around the time clock besides those?

A. Yes.

Q. Put up by employees on various matters?

A. Yes.

Q. Were you secretary and representative of the union, that is, the Consolidated Seedsmen's Union, prior to the time that you became Mr. Schoenfeld's secretary?

A. I was secretary of the union before I became Mr. Schoenfeld's secretary.

Q. And office representative also?

A. Yes, I believe so. [264]

Q. (By Trial Examiner Paradise) Just one

(Testimony of Violet Ashley.)

question, Miss Ashley: What was your job before you became secretary to Mr. Schoenfeld?

A. I was in the billing department.

Q. What was that?

A. I billed the orders that went out on the trucks, the city deliveries. [265]

FERN WINGROVE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Fern Wingrove, F-e-r-n W-i-n-g-r-o-v-e; 1421 West 51st Place.

Q. (By Mr. Cobey) Miss Wingrove, you are employed at Germain's? A. That's right.

Q. How long have you been so employed?

A. Oh, twelve years this March.

Q. What do you do down there?

A. I am a comptometer operator. I work under Miss Court.

Q. I see. Have you ever done any work for Mr. Meyberg or Mr. Schoenfeld?

A. Not unless they asked me to add a column of figures, something that takes five minutes or less.

(Testimony of Fern Wingrove.)

Q. I see. Now, you are a member of the Consolidated Seedsmen's Union, aren't you? A. Yes.

Q. I think I am correct in saying, am I not, that you were the director for the office from November 2, 1937, to the [266] first of this year?

A. I think that's correct.

Q. A great many of the meetings of the board of directors were held out at your home, weren't they? A. Yes.

Q. And you were responsible for certain of the social functions of the union, weren't you?

A. Well, I helped out.

Q. I mean such as the Federal Theatre performance, the two-a-day, and the showing of *The Drunkard*, and what not?

A. Yes, I made arrangements for the tickets.

Q. Can you tell me whether or not it was customary to have a social meeting after the business meeting of the general membership? [267]

The Witness: Well, sometimes we had them, and sometimes we didn't.

Q. (By Mr. Cobey) Sometimes you did not. Now, calling your attention to the year 1940, you attended the meetings of the general membership during that year, did you not?

A. I believe I have only missed about two general meetings.

Q. That is what I thought. Now, how many of

(Testimony of Fern Wingrove.)

the girls in the office ordinarily came to those meetings during the last six months in 1940 and up to the present time?

A. Oh, about half, I imagine, of the office members.

Q. How many would that be?

A. Oh, about ten.

Q. And what was the average attendance at those meetings?

A. Well, in all the time I attended, there was only two times that we didn't have a meeting.

Q. A quorum of fifteen?

A. Yes. All the other times there was fifteen and over. Well, sometimes it run about thirty, from twenty-five to forty.

Q. Now, during the last six months of 1940 up to the present time, the last nine months in other words, what did the average attendance run?

A. Well, the same. It varied, you see. Different times of the year people are on vacations, and it is just like every- [268] thing else around there, it varies.

Q. I see. Now, as director you participated in several bargaining conferences with the management, did you not?

A. Yes.

Q. Did any of those bargaining conferences occur during working hours, do you recall?

A. Yes.

Q. Were you docked for the time that you spent in the bargaining conferences?

A. No.

(Testimony of Fern Wingrove.)

Q. During the time that you were a director, do you recall any demands that the Consolidated Seedsmen's Union made on the management, which were refused? A. I only recall one.

Q. What demand was that?

A. Two weeks vacation with pay.

Q. That was put forward at the conference of May 12, 1938, as you recall?

A. Well, I don't know. It is in the minutes.

Q. Yes. At the time that this vacation demand was refused, did the Consolidated Seedsmen's Union ever make any threat of economic action, in the event its demands were not acceded to?

A. No.

Q. Now, during the time that you were a director, did the Consolidated Seedsmen's Union ever ask the company for a [269] written contract covering wages, hours and working conditions?

A. I think we were about to take that up when I was not re-elected.

Q. Now, didn't the Consolidated Seedsmen's Union have some new cards printed in the fall—last fall, 1940? A. Yes.

Q. And didn't you distribute some of those new cards to the membership?

A. I distributed them in the office division.

Q. Do you recall whether or not you spoke to Jack Thrift or Charles Loy about their securing the new cards? A. Yes, I spoke to them.

(Testimony of Fern Wingrove.)

Q. You did? A. Yes.

Q. Do you recall when and where you spoke to them?

A. Oh, I spoke to them as they were passing by.

Q. While you were working?

A. Oh, I don't remember. I talked to them sometimes during my lunch hour, if I happened to see them.

Q. Wherever you happened to see them?

A. Yes.

Q. And you may have talked to them in the office?

A. I may have talked to them during business hours. [270]

ALFRED A. FREEMAN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Alfred A. Freeman.

Trial Examiner Paradise: Arthur?

The Witness: Alfred A. Freeman, 9124 Menlo Avenue.

(Testimony of Alfred A. Freeman.)

Q. (By Mr. Colby) Mr. Freeman, you are employed by Germain's, are not you?

A. Yes, sir.

Trial Examiner Paradise: Is the name Freeman or Friedman?

The Witness: Freeman, F-r-e-e-m-a-n.

Trial Examiner Paradise: F-r-e-e-m-a-n?

The Witness : Yes, sir.

Q. (By Mr. Cobey) How long have you been employed down there?

A. Oh, about twelve years.

Q. Can you, very briefly, give us an idea of your employment experience down there? In other words, what did you do and [271] where did you work?

A. Well, I started——

Q. What have you been doing?

A. ——in the bull gang work. That is sack piling and sack sewing, and I also——

Q. When did you start there?

A. The first time I started in '26, about the middle of July.

Q. How long did you work at that time?

A. Well, I worked five and a half years, clear up to 1932, the 15th of January.

Q. During that time you worked in the bull gang at sack piling and sack sewing?

A. Yes, sir.

Q. Then you went back to work later at Germain's?

A. Yes. I went back there in '33, in the fall, oh, about October.

(Testimony of Alfred A. Freeman.)

Q. You went back on the bull gang again?

A. Yes, sack sewing.

Q. Have you been on the bull gang since then?

A. Yes.

Q. Now, does Mr. Hook work with the bull gang?

A. Yes.

Q. What does he do?

A. Well, he acts as a sort of a straw boss. He takes orders from Mr. Gates, then he relays the work to us. [272]

Q. What have you been getting while you have been working on the bull gang?

A. Well, during the depression I was getting \$65, and in '36 I believe I got——

Trial Examiner Paradise: Was that after the depression?

The Witness: Yes.

Trial Examiner Paradise: 1936?

Mr. Watkins: Who knows!

The Witness: (Continuing) —I got a \$10 raise.

Q. (By Mr. Cobey) You got a \$10 raise to \$75 a month? A. Yes.

Q. Then you have been raised since that time?

A. Yes.

Q. When did those raises occur, do you recall?

A. Yes. I got raise in '37.

Q. What was that to? A. \$10.

Q. To \$85 a month? A. Yes.

Q. It went up in 1937? A. Yes.

(Testimony of Alfred A. Freeman.)

Q. Any raises since then? A. Yes.

Q. When did they occur? And how much were they? A. Well, I got one in '39. [273]

Q. All right. What did that bring you to?

A. \$90.

Q. Did you get one last fall? A. Yes.

Q. How much did that bring you to?

A. To a hundred.

Q. Now, calling your attention to the period of August and September, 1937, were you ever approached at that time by any A. F. of L. organizers?

A. No.

Q. Did you see any of them about the plant, that is, the warehouse?

A. Yes, I seen two or three fellows around the plant at that time.

Q. Around the warehouse? A. Yes.

Q. Where did you see them?

A. On the shipping floor.

Q. On the shipping floor?

A. Yes, in front of the platform.

Q. Do you happen to know whether or not any of the employees joined the A. F. of L. at that time?

A. No.

Q. You don't know, or none of them did? Which do you mean? A. I don't know. [274]

Q. You don't know whether any of them did?

A. No.

(Testimony of Alfred A. Freeman.)

Q. But none did, to your knowledge? Is that right? A. That's correct.

Q. When did you join the A. F. of L.?

A. In 1940. That is, I signed up on September 5th; was initiated on September 20th.

Q. By "signed up September 5th," you mean you signed a membership application?

A. Yes.

Q. Bringing you back again to the period of August and September, 1937, do you recall a meeting or any meetings in the shipping room of the warehouse? A. Yes.

Q. Do you recall when the first of those meetings occurred?

Mr. Watkins: May I suggest, Mr. Cobey, that perhaps we could stipulate to this, because this is only cumulative. I understand there is no dispute about it.

Mr. Cobey: All right. I will withdraw that question.

Q. (By Mr. Cobey) You were present at a meeting in the warehouse at that time? A. Yes.

Q. I mean in the shipping room? A. Yes.

Q. Do you recall the first of those meetings?

[275]

A. Yes.

Q. Will you tell us to the best of your recollection what Mr. Sage said at those meetings or at

(Testimony of Alfred A. Freeman.)

that meeting—pardon me—the first of the meetings?

A. Well, Mr. Sage come out to us there and he stood on—on something, a platform there.

Q. You mean a platform where seeds are piled?

A. Yes. He started out by saying that he heard rumors about the plant about joining a union, and he also said, “Why not form an independent union?” And he also said that it would be much cheaper than an outside union.

Q. Do you remember anything else?

A. Yes. He also said that Mr. Meyberg and Mr. Schoenfeld, they had enough money, they could close the doors down and still live for the rest of their days.

Q. Is that the extent of your recollection?

A. Yes.

Q. How long did this meeting last?

A. Oh, about half an hour.

Q. Do you remember a second meeting at the same location? A. Yes.

Q. That occurred about a week after the first one, is that right? A. Correct.

Q. Now, that was held after quitting time, was it, in the [276] same location? A. Yes.

Q. Do you recall what happened at that meeting? You were present, weren't you?

A. Yes.

Q. What happened at that meeting?

(Testimony of Alfred A. Freeman.)

A. Well, Mr. Sage introduced Mr. Voorhees, and also this fellow from Cudahy, I don't recall his name. Then Mr. Voorhees addressed the meeting by saying that he had plenty of experience on unions, and he also said he had some constitutions and by-laws; I believe he said a copy of the constitutions and by-laws of the Cudahy Company.

Q. You mean of the union out there, don't you?

A. How is that?

Q. The constitution and by-laws of the Cudahy Independent Union? A. Yes.

Q. Do you remember anything else as to what he said?

(No response.)

Q. Mr. Freeman, I hand you Board's Exhibit 8. Have you seen a ballot like that before?

A. Yes.

Q. You recall that an election was held down in the warehouse—— A. Yes. [277]

Q. —along about this same time?

A. After the second meeting.

Q. After the second meeting in the warehouse?

A. Yes.

Q. How were you informed that an election was to be held? A. Through grapevine.

Q. You just heard about it? A. Yes.

Q. Do you recall whether or not you heard about it at that second meeting in the warehouse?

A. I don't get the question.

(Testimony of Alfred A. Freeman.)

Q. Do you have any recollection as to whether or not you heard about the election at the second meeting in the warehouse, the meeting where Mr. Voorhees spoke? A. Yes, I believe I did.

Q. Do you remember who told you about the election?

A. I believe it was Mr. Voorhees said it,—he spoke something.

Q. Do you remember anything about what he said?

A. Yes. I believe he said that it would be proper to hold an election so everybody would be satisfied.

Q. You voted in the election? A. Yes.

Q. When and where did you vote?

A. On the fifth floor. [278]

Q. How did you vote?

A. Well, Mr. Hook, I believe, he brought a box over and he handed me a piece of paper, and I voted.

Q. That was a piece of paper similar to Board's Exhibit 8? A. Yes.

Q. The one I just showed you?

A. Yes. And I put it back in the box.

Q. Was that while you were working?

A. Will you repeat that question?

Q. Was that while you were working?

A. Yes.

Q. Do you happen to recall whether it was in the morning or the afternoon?

A. In the morning.

(Testimony of Alfred A. Freeman.)

Q. Did you attend the Hill Street store meeting?

A. No.

Q. Now, you joined the Consolidated Seedsman's Union, didn't you? A. Yes.

Q. Do you remember when and where you joined?

A. In the fourth meeting, I believe.

Q. At the fourth meeting? A. Yes.

Q. Where was that meeting held?

A. At the Herman's Hall, at 25th and Main.

[279]

Q. Now, you have paid your dues in the Consolidated Seedsman's Union regularly——

A. Yes.

Q. —haven't you? A. Yes.

Q. Do you recall how you ordinarily paid your dues, and to whom you paid them?

The Witness: Well, I paid them in the plant to Emily Lilly.

Q. (By Mr. Cobey) Do you remember anybody else to whom you paid them?

A. Mr. Hook, and also Mr. Hartline.

Q. That is Mr. Harry Hartline?

A. Yes. And Mrs. Otto.

Q. That is Mrs. Bobbie Otto?

A. Yes. I guess that's all I can remember.

Mr. Cobey: Will you mark this, please, for identification?

(The document referred to was marked as Board's Exhibit 15, for identification.)

(Testimony of Alfred A. Freeman.)

Q. (By Mr. Cobey) Mr. Freeman, I hand you Board's Exhibit [281] 15, for identification. Will you tell us what it is?

Mr. Watkins: We will stipulate it in. It speaks for itself.

Mr. Cobey: This document purports to be a dues receipt for the Consolidated Seedsman's Union, dated November 4, 1940. I would like to offer it.

Mr. Watkins: No objection.

Q. (By Mr. Cobey) Do you recall any specific instance when Miss Lilly collected dues from you?

A. Yes.

Q. You will note this is dated November 4, 1940. Do you remember where you were at the time those dues were collected? [282]

A. Yes.

Q. Where were you?

A. On the fifth floor.

Q. On your job?

A. Yes. On the sixth floor also.

Q. Well, did she come up to you and collect your dues at that time? A. Yes.

Q. Do you recall whether she collected them on the fifth floor or the sixth floor on that occasion?

A. On the sixth floor.

Trial Examiner Paradise: Who is Miss Lilly?

The Witness: Miss Lilly works on the fifth floor.

Trial Examiner Paradise: In what capacity?

The Witness: She is an assistant to Mr. Gates, in his office.

(Testimony of Alfred A. Freeman.)

Trial Examiner Paradise: Is that the only time you ever paid your dues to Miss Lilly?

The Witness: I have been paying dues to her for the last six months, I think.

Trial Examiner Paradise: Well, are they always paid in that way, or were other means of paying the dues employed? Did you pay your dues in other places than in the plant itself to Miss Lilly?

The Witness: No. [283]

Trial Examiner Paradise: I beg pardon?

The Witness: No.

Trial Examiner Paradise: Did you pay your dues at other times than during working hours to her?

The Witness: No.

Q. (By Mr. Cobey) Now, Mr. Freeman, I call your attention to the meeting in Mr. Meyberg's office right after quitting time, in September of 1940. You were at that meeting, were you not?

A. Yes. [284]

Q. Were you at the second meeting, the one after the dinner at the Terminal Club?

A. Yes.

Q. Do you have any recollection as to what happened at that meeting?

A. Yes, I believe I do.

Q. What do you recall?

A. Well, Mr. Meyberg come up there and put out a blackboard, showed us what he had lost and what he made.

(Testimony of Alfred A. Freeman.)

Q. Do you remember anything else?

A. Yes. He also said we would get a raise starting from September 4th, I think is what he said.

Q. Is that all you recall? A. Yes.

Q. Do you remember him saying anything about bringing the doctor in? A. No.

Q. You don't recall that? A. No.

Q. But you remember the time that you got that pay increase last fall? A. Yes. [285]

Q. When did you get it?

A. October 4th, I believe.

Q. Was it as of October 4th?

A. From September 4th.

Q. From September 4th. Wasn't it from September 15th?

A. No, I think it was from September 4th.

Q. From September 4th? A. Yes.

Cross Examination

Q. (By Mr. Watkins) Mr. Freeman, you said you made application to join the American Federation of Labor on September 5th, 1940. Had you considered joining that organization for some little time prior to the time that you actually put in your application? A. I don't remember.

Q. Where did you join the A. F. of L., or where did you file your application? Where did you sign it?

A. At the Grand Theater Building.

(Testimony of Alfred A. Freeman.)

Q. Did you go down there intending to sign it, or had you discussed it and talked it over beforehand, as to whether or not you were going to join?

A. I don't remember.

Q. You don't remember of ever discussing——

A. No. [286]

Q. —with anybody about joining the A. F. of L. before you did it?

Trial Examiner Paradise: Answer out, Mr. Witness.

Mr. Watkins: I suppose the record will show the pause here, Mr. Examiner.

Trial Examiner Paradise: Yes. The record may show the witness is hesitating. [287]

Mr. Watkins: Now, may I have the question read?

Trial Examiner Paradise: Read it, Miss Reporter.

(Thereupon, the question referred to was read by the reporter as follows:

“Q. You don't remember of ever discussing with anybody about joining the A. F. of L. before you did it?”)

The Witness: Yes.

Q. (By Mr. Watkins) You do remember of discussing it with someone,——

A. No, sir.

Q. —or you do not?

A. No.

Q. Now, going back, Mr. Freeman, to the first meeting at the [288] warehouse with some of the employees and Mr. Sage. You remember the meeting some time in August, I believe, of 1937?

(Testimony of Alfred A. Freeman.)

A. Yes.

Q. I believe you testified that the meeting lasted approximately half an hour? A. Yes.

Q. Did anyone talk besides Mr. Sage?

A. In that first meeting?

Q. Yes. A. No.

Q. He was talking most of the time while the meeting took place, and the only things you can remember that he said at this time are the things that you testified to? A. Yes.

Q. (By Trial Examiner Paradise) Did you go to the A. F. of L. in September of 1940? When did you join, in August or September?

A. September 20th.

Q. Did you go alone or in a group?

A. In a group.

Q. How many in the group? [289]

A. About—about eight.

Q. Did you happen to go together by accident or had you talked together about going, before you went down?

A. No. I went with the group, but I didn't talk nothing about it.

Q. Well, how did you happen to go with them?

A. Well, I knew about it.

Q. You knew about it. You mean you knew that the others were going? A. Yes.

Q. How did you know that?

A. Through grapevine.

Q. Through the grapevine? A. Yes.

(Testimony of Alfred A. Freeman.)

Q. Well, the grapevine speaks, doesn't it?

A. Yes.

Q. That is, you heard somebody say it? Is that right?

A. That's it.

Q. And where did you hear somebody say it?

A. Around the building.

Q. Around the building? A. Yes.

Q. What was it that you heard the grapevine say?

A. That there would be several of the guys would be going over to join the A. F. of L., so I decided to go up in—of [290] my own accord.

Q. Do you remember which part of the grapevine it was that told you about this?

A. I don't.

Q. You don't remember? A. No.

Trial Examiner Paradise: I haven't any further questions.

Mr. Watkins: I have just one I would like to ask.

Trial Examiner Paradise: Very well.

Q. (By Mr. Watkins) Did you ever pay any dues to the Consolidated Seedsmen's Union during the noon hour? A. No, sir.

Q. Did you ever pay any dues to the Seedsmen's Union before you came to work? A. No, sir.

Q. Did you ever pay any after working hours?

A. No, sir.

Q. In other words, all the dues you ever paid, you paid during working hours? A. Yes, sir.

Mr. Watkins: That is all.

(Testimony of Alfred A. Freeman.)

Mr. Cobey: Did you ever pay any dues at the meetings?

The Witness: No, sir. [291]

HAROLD FRAUENBERGER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Harold Frauenberger, 1194 West 27th Street, Los Angeles.

Trial Examiner Paradise: Is that Harold?

The Witness: Yes, sir.

Trial Examiner Paradise: How do you spell your last name?

The Witness: F-r-a-u-e-n-b-e-r-g-e-r.

Mr. Cobey: May we have a slight recess at this point?

Trial Examiner Paradise: Yes. You may have a slight recess.

(A short recess.)

Trial Examiner Paradise: Proceed.

Q. (By Mr. Cobey) Mr. Frauenberger, you work down at Germain's, don't you?

A. Yes, sir. [292]

(Testimony of Harold Frauenberger.)

Q. How long have you worked there?

A. Since about the beginning of '27; approximately fourteen years.

Q. Can you, very briefly, give us a summary of your working experience down there? In other words——

A. You mean from the beginning?

Q. Yes.

A. I began as a shipping clerk's helper on the floor, and during the depression I was up working on the mills and in the bull gang, as the boys have called it, and worked a little while in the packing department—the package department, rather, on the fourth floor and going up to the retail store in rose bush season, when they have had rushes, and sold rose bushes, and then, of course, in about the last six years on the shipping floor.

Q. The last six years on the shipping floor?

A. About, approximately.

Q. Calling your attention to the period of August and September, 1937, what position did you have at that time?

A. City shipping clerk. That was under Mr. Hill.

Q. Can you tell us what you did at that time?

A. Checked the loads out and helped the boys load, attended to the air tubes and the complaint calls, and things of that sort.

Q. Did you act as dispatcher at all for the trucks? [293]

A. Well, on order of Mr. Hill.

Q. On order of Mr. Hill?

(Testimony of Harold Frauenberger.)

A. In other words, we had a group of orders every morning that were for the boys to handle,—

Q. I see.

A. —and it was on his orders.

Q. In other words, as I understand it, the trucks were routed by Mr. Hill; is that right?

A. No. There was no specific routes at all to follow. It was just as the work came in for the day, they had certain territories to cover, but the routes weren't exact—

Q. I see.

A. —on every trip, and a great many times the boys would route their own orders. In fact, that was the general practice.

Q. Would you relay Mr. Hill's orders to the truck drivers?

A. Generally speaking, yes. There was the orders for the day and there was an amount of work to be done, and everybody knew the amount of work that was to be done. In other words, they tried to load the trucks as soon as possible and get them out, so the boys would have plenty of time to finish their work in the daytime. It was work that everybody knew the general procedure.

Q. Now, how long did you work as city delivery clerk,—isn't it? [294]

A. Yes, the city shipping clerk.

Q. How long did you work at that?

A. About five or six years.

(Testimony of Harold Frauenberger.)

Q. About five or six years?

A. It is just recently that I have changed my position.

Q. What are you doing now?

A. The will call, receiving, shipping and the air tubes.

Q. As I understand it, you took Frank Miller's job when he had to go to the hospital?

A. Yes, that's right.

Q. Now, when Mr. Hill is sick, or for any other reason he is absent, who has charge of that shipping department?

A. No special one. There is a certain amount of work that has to be done and, well, it travels along just by itself, you might as well say, because most of the employees there have been there a great many years and they know their different positions without being coached every minute of the day or every day.

Q. Did you ever take charge when he was away?

A. I wouldn't say charge, because that wouldn't be the right—it is carrying on the regular procedure of my work.

Q. I see.

A. There never has been any occasion where anything has come up so that you could call it solving it yourself, or something like that. It has been the regular duties, the procedure that [295] has been carried on.

(Testimony of Harold Frauenberger.)

Q. When he is absent, is there anyone responsible for the truck drivers besides yourself?

A. By the word "responsible", what do you mean, Mr. Cobey?

Q. I mean, in other words, these truck drivers coming in and out, certain orders are being given to them, aren't there?

A. That is still the natural procedure of the day's work. In other words, there are pickups that come in from the different buyers, and the package department will need that, and if you have an empty truck, you don't run to Mr. Meyberg or Mr. Hill. You know that work has to be done. It is just automatic work that comes through.

Q. Now, the planning Mr. Meyberg does, as I understand, when he is absent, who does that?

A. Generally speaking, the drivers themselves have done it themselves. In other words, there may arise a question that a stop will be off a territory, and he lets,—the stop, rather, is given to another truck driver. And that is the morning's argument and getting ready for the day's work.

Q. Are those things referred to you?

A. Not necessarily. Sometimes they have been, but that has been just the natural procedure. The same question might arise between drivers. They may say, "You are going over to the southwest. How about taking this with you?"

Q. At one time you did discharge an employee, did you not? [296]

(Testimony of Harold Frauenberger.)

A. No, I haven't. I was laboring under a delusion, and I found that out definitely, because I had dropped out of the union, as you probably will ask me here eventually, and I wanted to be sure I was right, in the right standing before I would join up with the union again, and it was this, that Mr. Hill at one time took about a two months vacation or a month's vacation, anyway it was an extended period——

Q. Do you recall when that was? I don't mean to interrupt you. A. No, I don't.

Q. You don't recall the year?

A. I wouldn't want to make a misstatement.

Q. Would you know whether it was in 1938, 1939 or 1940?

A. The payroll record would show.

Q. You have no recollection?

A. No, I haven't.

Q. Pardon me for the interruption. Go ahead.

A. (Continuing) And there was an employee there that knew he was an extra man, and knew the date that he was to be let out, and at that time I went to Mr. Meyberg and—or, rather, to Mr. Hill before he left, to give the date, and also the boy knew that date that he was to be let out, and before the date arrived I went to Mr. Meyberg, and he said, "Tell him to go to the cashier." It was just more or less relaying the messages I found that out definitely, because there was a [297] question in my mind.

(Testimony of Harold Frauenberger.)

Q. Do you remember who that individual was? Do you remember his name?

A. Harold—Carl I believe it was—Harold Carl.

Q. Harold Carl? A. Yes.

Q. Now, taking the period from 1937 on, what has been your salary?

A. Beginning at 100 and arriving at a point of \$115 at present.

Q. Between \$100 and \$115?

A. Yes. Every time they had a general increase, why, I received an increase. I believe it was a hundred at that time.

Q. Now, Mr. Frauenberger, I believe that you were on the formational committee of the Consolidated Seedsmen's Union, and one of the incorporators? Is that right? A. That's right?

Q. You were also president from the date of incorporation, that is, the date the papers were filed, until April 5, 1938?

A. That was the end of the first term, the official term.

Q. Yes. And you were also a director for the shipping department from the date of the incorporation to July 1st, 1938, which again ended the first term? A. Yes, ended the term, yes, sir. [298]

Q. Now, I think I am correct in this: There has been testimony to the effect that after Mr. Sage dropped out of this, you were the person that took over, and you were active in the movement?

(Testimony of Harold Frauenberger.)

A. I was active with the group that formed it. There was a group of seven, six or seven, I believe.

Q. Do you remember the Hill Street store meeting?

A. In the evening?

Q. Yes.

A. Yes, sir.

Q. You presided at that meeting, did you not? Or am I in error in that?

A. Now, which meeting was that? Was that the meeting at the time the officers of the union were introducing themselves to the Germain Seed and Plant Company, or was that the time that they held the vote on the four different subjects, the ballot?

Q. Well, you have got me baffled now. You tell me about those things.

A. I believe I just did. If you would like to question me on it, all right. I don't know much more than that. There were two meetings. Naturally, the Germain Seed and Plant Company didn't know who the representatives of the Consolidated Seedsmen's Union were, who the bargaining agents were.

Q. I am not referring to any conference you had with the [299] management. I am referring to the general meeting of the employees.

A. That was the time they had the voting on the four different subjects,——

Q. On the four different subjects?

A. ——or the number of subjects it was. I don't remember.

(Testimony of Harold Frauenberger.)

Q. Wasn't there an election in the warehouse also?

A. I don't remember it. I wouldn't want to say "No," or I wouldn't want to say "Yes."

Q. Now, Mr. Frauenberger, I show you Board's Exhibit No. 8. Have you seen that type of ballot before, or was that the ballot that was used in this election you are referring to?

A. Yes, I believe it was.

Q. Now, do you know, of your own knowledge, how this ballot was prepared?

A. You mean, in the taking of the ballot?

Q. Well, in other words, the first thing I would like to know is: Who drew up the form of the ballot? Do you know that?

A. No, sir, I don't.

Q. Do you know who attended to the printing of the ballots?

A. No, sir, I don't.

Q. When did you first learn of this election?

A. I believe it was word of mouth.

Q. It was word of mouth? [300]

A. That's my guess. That is a guess answer.

Q. You had nothing to do with the arrangement of the election?

A. No. I wasn't associated with the management, or of the meetings, the calling of the meetings of the different groups together at this time. I was just an onlooker.

Q. I believe you were chosen president of the union at a meeting of the board of directors in Mr.

(Testimony of Harold Frauenberger.)

Voorhees' office on September 20th. Is that correct?

A. Well, it was at Mr. Voorhees' office. Wait a minute now. That was just acting president until the organization meeting. That was just in order that we could carry on the business of our corporation papers, the record, begin our minutes for corporation papers. It was pre-organization——

Q. Pardon me for interrupting.

A. Certainly.

Q. I don't want to take too long about this, but, as a matter of fact, under the constitution and by-laws—under the by-laws—pardon me—the board of directors elected the president, didn't they?

A. That's right.

Q. And you were elected at that meeting and remained in office until April 1, 1938?

A. No. At our first meeting—when I say "first meeting", I mean the first Seedsmen's Consolidated Union—— [301]

Q. General membership meeting?

A. ——general membership meeting. Well, very first, the people that were organizing the union disbanded, and they had a general election at that meeting at that time.

Q. There is no record in the minutes of such a procedure. How do you account for that?

A. The Seedsmen's Consolidated Union, I believe, was not a union, so far as our own minds were concerned, until the first meeting at Herman's Hall.

(Testimony of Harold Frauenberger.)

Q. Do you recall when that first meeting occurred?

A. I believe the date is in the minutes, that is, where they approved the by-laws. The by-laws were read and approved. [302]

BOARD EXHIBIT 16

Copy

GENERAL MEETING OF MEMBERS OF CONSOLIDATED SEEDSMEN'S UNION, INC.

The General meeting of the Members of the Consolidated Seedsmen's Union was called to order by the President, Harold Frauenberger, at 8:25 P. M. on November 9, 1937, at the Sons of Herman Hall, 120 E. 25th Street, Los Angeles, California.

Minutes of the Pre-Organization meeting held September 14, 1937, were read by the Secretary and approved.

The President stated that since the meeting of September 14th, the Consolidated Seedsmen's Union, Inc., had been incorporated, that a letter of recognition had been received from the Germain Seed & Plant Company which recognized this Union as the sole bargaining agent for all its employees at the Wholesale, the Hill St. Store, the Main St. Store, and the Van Nuys Store. The president also reported that many benefits to the members had al-

(Testimony of Harold Frauenberger.)

ready been agreed upon by the Germain Seed & Plant Co.

There was a general discussion in regard to enforcing the payment of dues by the members.

President Frauenberger asked for suggestions in regard to striking out the name of the Germain Seed & Plant Co. wherever it appears in the By-Laws of this Union. A general discussion followed.

It was moved by Jack Butterfield and seconded by Mary Martinez that there be a general meeting of the members of this Union held once each month. Motion carried.

It was moved by Ethel Durand and seconded by Mrs. Cook that these general meetings be held on the second Tuesday of each month. Motion carried.

It was moved by Theo Fielding and seconded by Evelyn Smead that the general meetings always be called at 8:00 P. M. Motion carried.

President Frauenberger called on each of the Divisions for discussion. Morris Stern, Director for Division #7 asked for suggestions. It was asked that an eight hour day be secured for all employees at the Van Nuys division.

R. Luck, Director of Division #2, called for discussion. The matter of seniority rights and standing was discussed.

D. G. Hatfield, Director of Division #3 not being present, the President called for discussion from that division. Pat Chavez asked that his position

(Testimony of Harold Frauenberger.)

and duties and rating be clarified. He was instructed to take this matter up with his Director at once.

Discussion from Division #4 brought forth the question of who the Billing Department works under.

Harold Frauenberger, Director of Division #1, asked for discussion, and members of the Traffic Department asked that their Director bargain for the drivers to have half hour lunch periods during the week and have Saturday afternoon off.

There was then considerable discussion as to how to secure a better attendance at the general meetings of the membership. President Frauenberger appointed a committee of Ethel Durand Mary Martinez to investigate and work out a plan and submit same at the next meeting.

Mary Martinez, as Department Representative, reported the question being raised at the Main St. Store in regard to being paid for overtime for having time off. The Director of Division #6 is to be approached to work this out with the management.

Tom Farley, Director of Division #5, asked for discussion, and Jack Butterfield asked that the promised made to him "that he would be taken care of in a little while" be followed up and some definite arrangement made. Tom Farley said he would take the matter up at once with the management.

After considerable general discussion of all these matters, it was moved by Ethel Durand and sec-

(Testimony of Harold Frauenberger.)

ended by Amos Kays that the meeting be adjourned.
Motion carried and the meeting declared adjourned.

/s/ DOROTHY TURTON

Secretary

/s/ HAROLD FRAUENBERGER

President

Q. (By Mr. Cobey) Now, Mr. Frauenberger, you have before you Board's Exhibit 3, and I also hand you for your inspection Board's Exhibit 11. Will you tell me what you know about those documents?

A. These were signatures of the charter members.

Q. You say "these." You mean Board's Exhibit 3? [303]

A. The pre-organization agreement.

Q. As I understand it, Board's Exhibit 3 was prepared from Board's Exhibit 11?

A. If the names check on both copies, it was.

Q. Yes. You may check them later.

A. I have, a little bit previous to this, at your suggestion.

Q. Did they seem to check?

A. Yes, sir.

Q. Do you know anything about the circulation of Board's Exhibit 11?

A. Just of the one that I had to circulate. I remember it was on my vacation time, and I spent

(Testimony of Harold Frauenberger.)

three days of my vacation, trying to contact the drivers.

Q. I see.

A. That was on my own time.

Q. On your own time?

A. In other words, I didn't get more time for it or pay for the days that I wasted, from the union or anyone.

Q. Where did you contact them?

A. Out in front.

Q. Out in front? A. Yes, sir.

Q. Do you know who else had copies of the various sub-sections of Board's Exhibit 11, in other words, various copies of this [304] pre-organization agreement and took them around to obtain signatures?

A. The pre-organization committee did, whoever they were at that time.

Q. In other words, the formational committee?

A. Yes, sir.

Q. I see.

A. Wherever they were working. It was one from the different divisions they finally made up.

Q. Is it your recollection that each of the members of the formational committee was given one of those pre-organization agreements and told to circulate it amongst the employees in his particular division?

A. Yes, sir. Not told to. It was the natural proceeding. After all, we had no money to pay for an

(Testimony of Harold Frauenberger.)

attorney or hire printing, or the other things that was necessary, and that was the normal start, the natural start, I should say.

Q. Do you know when that circularization took place? In other words, to refresh your recollection, your articles of incorporation, that is, of the Consolidated Seedsmen's Union, were executed on September 9th, they were filed on September 20th, at which time the first meeting of the incorporators took place. Was this circulated some time between those two dates, do you know?

A. You can find that out definitely by finding out when I [305] had my vacation. I know it was in the middle of my vacation.

Q. And you don't recall when you had your vacation?

A. No, I couldn't mention the date, because I wouldn't be sure.

Q. Do you think it was in that period I mentioned?

A. It was around the 1st of September, up in that period. [306]

BOARD EXHIBIT 17-A

Minutes of Sept. 9, 1937

Minutes of the first meeting of the Pre-Organization Committee.

The Pre-Organization Committee met Thursday evening Sept. 9th, 1937, at the offices of J. P.

(Testimony of Harold Frauenberger.)

Voorhes, 5325 Crenshaw Blvd., Los Angeles, the Committee being comprised of Harold Frauenberger, Harry B. Orr, Morris Stearn, William S. Clark, Allan Hook, Dorothy Turton and Richard Luck.

After considerable discussion, and on the advice of Mr. Voorhes, it was decided that a Non-Profit Co-Operative Corporation should be formed by the employees of the Germain Seed & Plant Co. In order to incorporate, the organization must be named and the name chosen was "Seedsman's Consolidated Union." This name will entitle us to issue charters to employees of other seed firms.

Mr. Voorhes advised that his fee for drawing up the Articles of Incorporation, and advice in connection with forming an independent union would be \$50.00. The fee for filing Articles of Incorporation with the State of California would be \$11.00. If Mr. Voorhes were to assist in drawing up a contract between the employees and the management of the Germain Seed & Plant Co., and attend one or two meetings with the management, his fee would be \$25.00 additional.

It was pointed out that in forming a Non-Profit organization, there would be no Franchise Tax to pay to the State.

The Articles of Incorporation, and the Affidavit to the effect that the proposed union would be non-profit, were prepared by Mr. Voorhes and all seven

(Testimony of Harold Frauenberger.)

members of the Committee signed these papers and instructed Mr. Voorhes to file them in Sacramento.

The Committee then appointed Harold Frauenberger to be Chairman and Dorothy Turton to be Secretary-Treasurer until such time as the members of the Union elect their regular officers.

The following initiation fees were turned over to the Treasurer:

Harry B. Orr	\$8.00
Richard Luck	4.00
Morris Stearn	6.00
Harold Frauenberger	7.00
William S. Clark	10.00
Allan Hook	20.00
Dorothy Turton	3.00
<hr/>	
Total	58.00

The Treasurer was instructed to pay to Mr. J. P. Voorhes \$11.00 for the filing of the Articles of Incorporation at Sacramento, leaving a balance in the Treasury of \$47.00.

The Committee then decided to meet Friday evening at the residence of Dorothy Turton to draft By-Laws to be presented to the members to be voted upon.

There was a general discussion in regard to calling a meeting of all employees of the Germain Seed & Plant Co. the early part of next week, and

(Testimony of Harold Frauenberger.)

the Chairman, Harold Frauenberger, was instructed to secure a meeting place for said meeting.

/s/ DOROTHY TURTON

Read and approved Sept. 14, 1937.

/s/ DOROTHY TURTON

BOARD EXHIBIT 17-B

MINUTES OF SEPTEMBER 10, 1937

Minutes of the second meeting of the Pre-Organization Committee.

The Pre-Organization Committee met Friday evening, Sept. 10, 1937, at the residence of Dorothy Turton. Those present were: Harold Frauenberger, Harry B. Orr, Morris Stearn, Allan Hook and Dorothy Turton.

As the purpose of this meeting was to draw up By-Laws to be presented to the members of the Seedsmen's Consolidated Union, the evening was devoted to this work.

Chairman Harold Frauenberger reported that he would probably secure a meeting place for the next general meeting Saturday and for the Committee to notify the employees of the next meeting for Tuesday night, meeting place to be announced later.

(Testimony of Harold Frauenberger.)

Secretary was instructed to prepare receipts to be issued to the members for their initiation fees, when paid.

/s/ DOROTHY TURTON

Secretary

Read and approved Sept. 14, 1937.

/s/ DOROTHY TURTON

BOARD EXHIBIT 17-C

MINUTES OF SEPTEMBER 14, 1937

Meeting of the Employees of the Germain Seed & Plant Co. was called to order by the Pre-Organization Committee, Chairman, Harold Frauenberger, at 8:15 P. M., Sept. 14, 1937, in the Sons of Herman Hall, 25th and Main Sts., Los Angeles.

Chairman Frauenberger explained that the purpose of this meeting was to hear the reading of the proposed By-Laws drafted by the Committee, to act on these By-Laws, and to elect representatives to carry on the work of the organization.

Chairman Frauenberger asked for a vote of thanks to Otto Witt for his making it possible for us to secure the Sons of Herman Hall for this meeting. Unanimous.

The minutes of the Pre-Organization Committee meetings of Sept. 10th and Sept. 11th were read and approved.

(Testimony of Harold Frauenberger.)

Chairman Frauenberger announced that the Committee had chosen the name of "Seedsmen's Consolidated Union" for this organization when filing corporation papers, that it is to be a non-profit organization, and that we will have the power to issue charters to employees of like companies to carry on union business under our corporation.

Chairman Frauenberger then started reading the proposed By-Laws drafted by the Pre-Organization Committee and asked for discussion and suggestions.

It was moved by Frank Miller and seconded by Charles Converse that the membership of this union be left divided into the seven sections as stated in the proposed By-Laws. Motion carried.

It was moved by Thos. G. Harrison and seconded by Ethel Durand that the officers of this union hold office for one year. Motion carried.

It was moved by D. S. Westfall and seconded by R. Luck that the Financial Secretary and Treasurer be placed under a bond of \$500.00 each. Motion carried.

It was asked by Erick Regan if agricultural workers were entitled to membership in this union. It was pointed out that this Division is listed as the Van Nuys Store and not ranch.

It was moved by Allan Hook and seconded by Harry B. Orr that membership cards be issued which may be used for one year. Motion carried.

(Testimony of Harold Frauenberger.)

It was moved by D. S. Westfall and seconded by V. J. Nesbit that the dues shall be due on the 5th of each month and delinquent on the 15th of each month. Motion carried.

It was moved by James Colbry and seconded by W. A. Epperson that all voting of motions in the future be by raising the hand rather than by saying "aye" and "nay." Motion carried.

The matter of issuing buttons to the membership was discussed and suggested that the cost of purchasing same should be investigated. It was moved by Thos. G. Harrison and seconded by R. Kadous that the matter of deciding upon and securing buttons be left to the governing body to decide. Motion carried.

It was moved by Frank Miller that the Initiation Fee be \$1.00 for thirty days and then be raised to \$5.00. This motion was amended by Thos. G. Harrison that the Initiation Fee be increased in ten days instead of thirty days. The motion was seconded as amended by Thomas Farley. Motion carried.

It was moved by Richard Kadous and seconded by James Colbry that a quorum of fifteen members is necessary to hold a meeting and conduct the business of the union. Motion carried.

At the conclusion of the reading of the proposed By-Laws, they were approved as amended by the motions voted upon at this meeting.

Chairman Frauenberger called upon Allan Hook who at this time asked the membership to cooperate

(Testimony of Harold Frauenberger.)

and pull together so as to accomplish what this union has set out to do.

Chairman Frauenberger then asked all those who had not paid their Initiation Fee to step to the Secretary's desk and do so and receive their receipt, as only those holding a receipt would be entitled to vote at the elections to be held at this meeting.

The Pre-Organization Committee turned over to the Secretary the following initiation fees:

Allan Hook	\$2.00
K. Luck	1.00
Harold Frauenberger	1.00
Dorothy Turton	2.00
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Total	6.00

The members who paid their Initiation Fees to the Secretary were as follows:

Justin Scharff	\$1.00
Nida Crayton	1.00
Bob Kadous	1.00
Betty Anderson	1.00
Viola Gates	1.00
Charles C. Fitzgerald	1.00
Blanche L. Eaton	1.00
C. L. Van Doren	1.00
<hr/>	
Total	8.00

(Testimony of Harold Frauenberger.)

This made a total of \$14.00 turned into the Secretary for Initiation Fees, making the following Treasury Report:

Cash in hand	\$47.00
Initiation fees 9/14/37	14.00
	<hr/>
	61.00
Paid for hall rent	4.00
	<hr/>
Balance on hand	57.00

Chairman Frauenberger again called the meeting to order and asked if any one in the room was not a member to please retire.

Chairman Frauenberger then stated that the members would vote for one Assemblyman and one Department Representative from each section, each section to hold a separate election, and the party receiving the most votes to be elected Assemblyman and the party receiving the second highest number of votes to be elected Department Representative. Each member of the Pre-Organization Committee was then instructed to issue ballots in his own section and collect same for counting. The ballots cast were as follows:

Division # 1—Traffic: Harold Frauenberger 7, Stanley Watson 3, Eric Hulphers 2, Richard Kadous 2, Frank Miller 1, W. A. Epperson 1. Harold Frauenberger was elected Assemblyman and Stanley Watson was elected Department Representative.

(Testimony of Harold Frauenberger.)

Division #2—Third Floor: R. Luck 8, Florence Siemsen 5, Betty Anderson 2, Helen Martin 1, Alice Hook 1, Dorothy Davis 1. R. Luck was elected Assemblyman and Florence Siemsen was elected Department Representative.

Division #3—Fourth, Fifth and Sixth Floors: D. G. Hatfield 15, Allan Hook 9, V. J. Nesbit 8, Otto Witt 4, F. A. Wall, Jr. 1, Ed. Casey 1, Al Freeman 1, Roy Yoakum 1. D. G. Hatfield was elected Assemblyman and Allan Hook was elected Department Representative.

Division #4—Office: Blanche L. Eaton 6, Dorothy Turton 5, Viola Gates 4, Justin Scharff 2, C. L. Van Doren 1. Blanche L. Eaton was elected Assemblyman and Dorothy Turton was elected Department Representative.

Division #5—Hill St. Store: Thomas Farley 8, Thos. G. Harrison 6, Ethel Durard 3, E. J. Porter 3, Eugene Ganster 2, Eleanor Newmark 1, Charles Converse 1. Thomas Farley was elected Assemblyman and Thos. G. Harrison was elected Department Representative.

Division #6—Main St. Store: Harry Fenster 5, Mary Martinez 3, A. Coleman 2, Harry B. Orr 2, Minnie T. Sievers 1. Harry Fenster was elected Assemblyman and Mary Martinez was elected Department Representative.

Division #7—Van Nuys Store: Morris Stearn 5, Denver Hysell 4, Theodore Schroder 2, Erich Regan 1. Morris Stearn was elected Assemblyman and

(Testimony of Harold Frauenberger.)

Denver Hysell was elected Department Representative.

Chairman Frauenberger then declared that the Pre-Organization Committee was dissolved and that the Assembly was in force.

As there was no other business to come before the meeting, the meeting was adjourned and the Assemblymen and Department Representatives were asked to stay after the meeting.

/s/ DOROTHY TURTON

Secretary.

Read and approved Sept. 21, 1937.

/s/ DOROTHY TURTON

BOARD EXHIBIT 17D

MINUTES OF ASSEMBLY OF SEPT. 14, 1937

The first meeting of the Assembly came to order at 11 P. M. Sept. 14, 1937, immediately following the adjournment of the general meeting of the Seedsmen's Consolidated Union. Assemblymen present were Harold Frauenberger, Richard Luck, D. G. Hatfield, Blanche L. Eaton, Thomas Farley, Harry Fenster and Morris Stearn. The Department Representatives present were Stanley Watson, Florence Siensen, Allan Hook, Dorothy Turton, Thos. G. Harrison, Mary Martinez and Denver Hysell.

(Testimony of Harold Frauenberger.)

The Department Representatives were instructed to collect the Initiation Fees of those not yet paid and to secure information and data as to the feeling among the members of his division, this information to be turned over to the assemblymen to be used as a working basis in drawing up the contract. The Department Representatives were then excused from the meeting.

The Assembly held an election for President of the Seedsmen's Consolidated Union and the following votes were cast: Harold Frauenberger 5, D. G. Hatfield 1, R. Luck 1. Harold Frauenberger was declared elected President.

It was moved by Harold Frauenberger and seconded by D. G. Hatfield that Dorothy Turton be unanimously elected Secretary-Treasurer of the Union. Motion carried.

It was moved by Harold Frauenberger and seconded by Blanche Eaton that Viola Gates be asked to take the office of Financial Secretary. Motion carried.

The motion was made and seconded that the bank account for the Seedsmen's Consolidated Union be carried in the Security First National Bank at 7th and Central. Motion carried.

The motion was made and seconded that the signatures of the President and Secretary shall be necessary on all warrants for the expenditure of any funds of the union. Motion carried.

(Testimony of Harold Frauenberger.)

It was agreed that the next meeting be held on Tuesday evening, Sept. 21, 1937, time and place to be named later by Harold Frauenberger.

As there was nothing more to come before this meeting, the meeting was adjourned.

/s/ DOROTHY TURTON

Secretary

Read and approved Sept. 21, 1937.

/s/ DOROTHY TURTON

BOARD EXHIBIT 18-A

Consolidated Seedsmen's Union, Inc.

2415 12th Avenue

Los Angeles, California

September 28, 1937.

Germain Seed & Plant Company

747 Terminal Street

Los Angeles, California

Attention: Mr. Manfred Meyberg

President

Dear Sir:

The Board of Directors of the Consolidated Seedsmen's Union has instructed us to inform you that the Union now has as its members more than fifty-one per cent of your employees and as such is entitled to be recognized by you as the exclusive bargaining agent for all of your employees under the

(Testimony of Harold Frauenberger.)

provisions of the Wagner National Relations Act.

In order that you may be satisfied regarding the number of your employees who are members of our Union, our Secretary will be glad to show you the Pre-Organization Agreement which was signed by more than fifty-one per cent of your employees, and you may check these names against your payroll records if you desire. You may also see the Membership Application cards and check the signatures appearing thereon against your payroll.

We ask that you satisfy yourselves as quickly as possible and that you write us a letter stating that you are satisfied that we represent more than fifty-one per cent of your employees and that you do recognize the Board of Directors of the Consolidated Seedsmen's Union as the exclusive bargaining agent for all of your employees.

Very truly yours,

CONSOLIDATED SEEDSMEN'S
UNION, INC.

.....
President

.....
Secretary

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 18-B

GERMAIN'S

Germain Seed and Plant Co.

Arcade Station P. O.

Los Angeles, U. S. A.

Established 1871

Oct. 1, 1937

Consolidated Seedsmen's Union Inc.

2415 12th Ave.

Los Angeles, Calif.

In Reply Refer to MM

Dear Sirs:

Replying to your letter of Sept. 28th beg to advise that we have checked your list of members and find that same constitutes more than 51% of our regular employees at our four units, known as the Wholesale Department at 747 Terminal St., Retail Store 562 Main St. Retail Store 635 S. Hill St. and the Van Nuys Store at 6133 Ethel Ave. and in accordance with your request desire to signify willingness of this Company to recognize your Board of Directors as the exclusive bargaining agent for these units.

Yours very truly,

GERMAIN SEED &

PLANT COMPANY

By MANFRED MEYBERG

MM:S

President

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 18-C

Consolidated Seedsmen's Union Inc.

2415 12th Avenue

Los Angeles, Calif.

October 1, 1937

Notice to Members:

On October 1, 1937, and until further notice, Germain Seed & Plant Company has recognized the above mentioned Union and Corporation as the exclusive bargaining agent for their employees of the four units, the Wholesale, the Hill Street Store, the Main Street Store, and the Van Nuys Store.

The Consolidated Seedsmen's Union Directors wish to thank their members for the wholehearted co-operation they have given during the pre-organization period. This same cooperation is very necessary at all times for the continued success and welfare of your organization.

H. FRAUENBERGER

President

DOROTHY TURTON

Secretary

Q. (By Mr. Cobey) Mr. Frauenberger, I show you two documents which have been marked as Board's Exhibits 12-A and 12-B. You have examined them before?

(Testimony of Harold Frauenberger.)

A. Yes, sir, I have. [311]

Q. Are you familiar with them?

A. To a certain extent. I have read them over recently.

Q. You will note that they evidently refer to certain negotiations. I wonder whether you could tell us what you recall of those negotiations?

A. When we received the letter of recognition, naturally, we had certain things that we wanted adjusted, including wages and hours and the surety of an understanding of vacation, and things of that sort, and that is what is listed on this larger sheet of paper here.

Q. Were those suggestions prepared by the board of directors?

Mr. Watkins: Wait a minute. Excuse me. You say "this larger sheet of paper." Does that have an exhibit number?

Mr. Cobey: Yes. I am sorry.

Mr. Watkins: What is it?

The Witness: 12-A.

Q. (By Mr. Cobey) Was Board's Exhibit 12-A prepared by the board of directors for the purpose of this conference?

A. In conjunction with the membership. Each director and representative canvassed his certain division for suggestions on the wants of the different employees and members—I will say "employees" rather, because there were a certain few that weren't

(Testimony of Harold Frauenberger.)

members, and that was the sum and total of their findings. [312]

Q. (By Mr. Cobey) Mr. Frauenberger, I hand you four documents, which have been marked as Board's Exhibits 19-A, 19-B, 19-C and 19-D, for identification. You have examined these documents before, have you not? A. Yes, sir.

Q. Now, it would appear from Board's Exhibit 19-A, for identification, that this conference, to which you have just been referring, between the Board of Directors and the management of the company, occurred on October 5, 1937.

A. Yes, sir.

Q. And it would appear from Board's Exhibit 19-C, for identification, that following the conference the membership was polled as to whether or not they would agree to the results of the conference. Is that correct? A. Yes, sir.

Q. And the poll in all cases was favorable, with the exception of the office, and as to the office further negotiation [313] occurred. Is that correct?

A. Yes, sir, that is correct.

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 19-B

Consolidated Seedsmen's Union, Inc.

2415 12th Avenue

Los Angeles, Calif.

October 14, 1937

Germain Seed & Plant Company

747 Terminal Street

Los Angeles, California

Attention: Mr. Manfred Meyberg

Dear Sir:

The Board of Directors wish to advise that the following vote was cast by the members of the Consolidated Seedsmen's Union to give the Directors of the Union the right to proceed with making definite agreements with the Germain Seed & Plant Company as per the suggestions already presented to your firm.

Yes	54 votes
No	26 votes

A great many of these suggestions have not yet been worked out. Their speedy consideration and adjustment will be for the benefit of both the Union and the Germain Seed & Plant Company.

Yours truly

.....
President
.....

Secretary

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 19-C

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickie.

Excerpt from

Minutes of Meeting of
Board of Directors

(Meeting of October 13, 1937)

Page 2

Lines 10-30

Harold Frauenberger appointed the following committees to count the ballots cast by the members on October 12th and 13th on the acceptance or rejection of the hours and wages proposed by the Management of Germain Seed & Plant Company, and the suggestions proposed to and accepted by the management: A. Vanderveer, R. Kadous, and E. Hulphers to count the Third Floor, Office, and Van Nuys; Margaret Weihe, Clara Seastedt, and Myrtle Butterfield to count the Traffic Dept., 4th, 5th, and 6th Floors, and Main St. Store; Margaret Weihe, Clara Seastedt and Helen Linnell to count the Hill St. Store.

The Secretary read the reports of the committees, which were as follows:

(Testimony of Harold Frauenberger.)

Traffic Dept.	Yes 6	No 2
Third Floor	Yes 15	No ...
4th, 5th, & 6th Floors	Yes 12	No 7
Office	Yes 5	No 10
Hill St. Store	Yes 7	No 3
Main St. Store	Yes 4	No 2
Van Nuys Store	Yes 5	No 2
<hr/>		
Total	Yes 54	No 26

After considerable discussion, it was decided that Harold Frauenberger and D. G. Hatfield with Blanche Eaton approach Mr. Meyberg at once in the interests of the office, and also to ascertain definitely the effective date of the new scale of wages and hours; also to come to a better understanding as to when the grievances or suggestions that have already been stated shall be worked out.

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 19-D

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

Minutes of Meeting of

Board of Directors

(Meeting of November 2, 1937)

Page 1

Lines 14-17

The committee of Harold Frauenberger and D. G. Hatfield, together with Blanche L. Eaton, appointed to see Mr. Meyberg about effecting a more favorable agreement between the office employees and the management, reported some success.

Q. (By Mr. Cobey) Now, Mr. Frauenberger, calling your attention again to Board's Exhibit 12-A, you will notice on there certain pencil notations. Now, as to those numbered paragraphs that are marked "O. K.," does it mean that at this [314] bargaining conference on or about October 5, 1937, an agreement was reached between the directors and the management as to those portions?

A. That's right, yes, sir; subject to the penciling underlining the notation, of course, to each item, that is correct.

(Testimony of Harold Frauenberger.)

Q. Now, was this conference held with the board of directors as a whole, or was the conference held with the director of each division? A. Both.

Q. How was it done?

A. The main general subjects were talked about and brought forth, and debates, a small debate on the different subjects was offered on both sides. Then it broke up into committees, and the great thing seemed to be, as I remember it, seemed to be speed in getting more money for the boys. They wanted more money—our members, rather—and the union decided they could work faster and get more results by breaking the conference into committees after the main meeting of us was held.

Q. Now, at this main meeting, the full membership of the board of directors was there, from the Consolidated Seedsmen's Union, as you recall?

A. Yes, sir.

Q. And who represented the management?

A. Mr. Meyberg. [315]

Q. Mr. Meyberg was the sole representative of the management? A. Yes, sir.

Q. As I understand your testimony, he first conferred with you as a whole on the subjects that affected you as a whole, on the suggestions that you put forward?

A. There were other members that attended from the firm. Mr. Meyberg, of course, represented the firm.

(Testimony of Harold Frauenberger.)

Q. Who were the other members from the firm?

A. Mr. Marks and Mr. Schoenfeld. I believe that was all.

Q. Mr. Schoenfeld was the vice president?

A. And sales manager.

Q. And was at that time?

A. And was at that time.

Q. And what was Mr. Marks at that time?

A. He was manager of the retail store.

Q. That is of the Hill Street store?

A. The Hill Street store and Main Street store both was under his supervision.

Q. Then following the general conference, it was broken up by divisions and you had conferences?

A. Yes, sir. They felt that each division, each director and representative knew the definite ones of their members and could complete the business in a shorter period of time. [316]

Q. (By Mr. Cobey) How was this conference arranged?

A. Through the secretary of the union. Through --I don't remember whether she made the arrangements over the phone or through letter, but it was made.

Q. And she notified the various members of the board of directors as to the appointment?

A. Yes, that's right. I believe she typed out a printed slip and gave them to us.

Q. And that was distributed to the members of the board of directors?

A. Yes, that's right.

(Testimony of Harold Frauenberger.)

Q. Do you know how it was distributed? Do you recall how you received it?

The Witness: No, I don't remember how it was distributed. It is too long ago.

Q. (By Mr. Cobey) Now, Mr. Frauenberger, I call your attention [317] to Board's Exhibit 12-B. You have examined that?

A. Yes, sir, I have.

Q. Does that represent an accurate summary of what was agreed to with respect to Division 3?

A. I don't see anything in here about seniority rights. That was granted to the whole organization, and that is item 6.

Mr. Watkins: Item 6 on Exhibit 12-A?

Mr. Cobey: Yes. Pardon me.

The Witness: Yes. That is not on 12-B. As I remember it, this was just a general rough summary of the conference.

Mr. Watkins: You are speaking of "this." What are you speaking of?

The Witness: 12-B was a rough summary of what was obtained for Division 3. It wasn't an accurate summary, but I believe some of the new members raised the question of just what was given Division 3, and we roughly made it out.

Q. (By Mr. Cobey) As I understand it, this (indicating) was a notice that was posted?

A. I believe this copy here (indicating) was taken from this one here (indicating).

(Testimony of Harold Frauenberger.)

Trial Examiner Paradise: Referring to Board's Exhibit 12-B being taken from the penciled paper attached to it?

The Witness: Yes. This was just a rough copy. It [318] wasn't taken exactly from this one here. It was just a rough copy for an answer to their inquiry of what was granted.

Q. (By Mr. Cobey) Now, calling your attention again to Board's Exhibit 12-A, and the paragraph numbered 2, in regard to overtime, can you tell me whether or not, to your knowledge, that overtime at the rate of time and a half has been paid since that time?

A. To my knowledge, yes, sir.

Q. What about paragraph 4, numbered 4 on Board's Exhibit 12-A, in regard to vacations? Before you answer the question: Just to refresh your recollection, weren't there further negotiations in regard to vacations in May, 1938?

A. I believe there was. It was right before vacation time.

Now, what was your first question, Mr. Cobey,—about the holidays, you were asking about?

Q. No. I was going to ask about vacations, but it appears that because of further negotiations the vacation matter had not been settled definitely, at least, prior to May, 1938. Is that your recollection?

A. Yes. The action was at this time, but we wanted to try to get a two weeks period for the members that had been working over five years.

(Testimony of Harold Frauenberger.)

Q. I see. Now, what had been the vacation practice of the company prior to that time?

A. After employment of one year you were eligible for one [319] week, but with the change and bargaining rights of the union, naturally, if that wasn't stated, that wouldn't be a fact that all members would receive that.

Q. I see.

A. And the same thing is true with item 5.

Q. That is the——

A. (Continuing) We felt if it was not brought out, it would not be a fact, it would not be so.

Q. Item 5 of Board's Exhibit 12-A referred to holidays? A. Yes.

Q. Now, you have already referred to paragraph numbered 6 on Board's Exhibit 12-A. That is the seniority rights, and as I understand that from your previous testimony, since that time promotional and lay-off seniority has been observed, to the best of your knowledge? A. That's right, yes, sir.

Q. Had it been observed prior to that time?

A. Generally. Generally so, because——

Q. Was your reason——pardon me for interrupting you. You may complete your answer.

A. (Continuing) ——there has been several occasions where the union has made adjustments through this right that we have gained.

Q. I see. Now, in regard to item No. 1 on Board's Exhibit 12-A, the one relating to overtime—item 2,

(Testimony of Harold Frauenberger.)

rather—has [320] time and a half been paid for overtime prior to that time?

A. To those that could get it, in other words.

Q. Was it the general practice?

A. If the need for overtime was strong enough, and the certain ones held out, they would receive it. Otherwise, it would be, oh, supper money, something of that sort.

Q. But since that time, to your knowledge, time and a half has been paid for overtime; is that correct?

A. Yes, sir, when it has been brought up, as far as I know, it has.

Trial Examiner Paradise: Will you read that answer?

(The answer was read by the reporter.)

Trial Examiner Paradise: I don't understand your answer. You say "when it has been brought up." What does that mean?

The Witness: It has, yes. Overtime has been granted, has been paid.

Trial Examiner Paradise: Has been paid, as a matter of course?

The Witness: Yes, sir. That has been automatic.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Now, I call your attention to paragraph No. 8 on Board's Exhibit 12-A, in regard to the scale of wages, and I notice a notation, a penciled notation, "Discussed individually." What does the pencil notation mean?

(Testimony of Harold Frauenberger.)

A. Well, that pencil notation is for the instance of the [321] office. I wouldn't want to be sure, but it was some special instance that arose.

Q. I see. Do you happen to know did it mean that wages were to be discussed with the individual members, or what? A. By whom?

Q. By the management. A. Oh no.

Q. No? A. No, sir.

Q. It would mean that the directors——

A. Those are business with the directors, with the members of the directors and the firm. It was not between the employee and the firm.

Q. It was between the directors, in other words?

A. Between the directors.

Q. In other words, the individual discussion was between the representatives of the management and the directors of the union? Is that right?

A. That's right, yes, sir.

Q. Now, Mr. Frauenberger, again calling your attention to Board's Exhibit 12-A, and to the paragraphs numbered 10, 11 and 12, which have a penciled notation after them, "To be worked out by the firm and the union," and also the penciled notation, "O.K." Does that mean the management agreed to them as a matter of general principle and left the details to be [322] worked out in further negotiations?

A. They were items that took a period of time to work out. In other words, they couldn't be put

(Testimony of Harold Frauenberger.)

into effect on a moment's notice, but they were granted.

Q. And they were later worked out?

A. Yes, sir. In other words, you will notice this one, "The delivery trucks shall have meters to record overtime and the day's work." They did not know where to buy the meters. We had to find that out, and then installing them, that took a period of time. That is what I mean when I say a period of time to be worked out.

Q. They were subsequently installed?

A. Oh, positively, yes, sir.

Q. The meters on the trucks, that is paragraph numbered 10?

A. Yes, sir.

Q. Now, again referring to Board's Exhibit 12-A, for identification, paragraph No. 14 in regard to the closing of the shipping floor doors during lunch hour. That practice has been followed since then?

A. They have closed the delivery doors, and they leave the others open. The traffic manager signs for the merchandise when he is there.

Q. That is during the lunch period?

A. Yes. The delivery doors are closed on one side of the building. There are two that are open, and the boys sit in [323] the doorway to eat their lunch, and it is an accommodation that they like, and the other doors are closed.

Trial Examiner Paradise: Does that practice

(Testimony of Harold Frauenberger.)

differ from the practice that prevailed before these suggestions were made?

The Witness: Yes. They used to leave the two doors that are closed, they used to leave them open.

Trial Examiner Paradise: What was the significance of the change?

The Witness: Well, there was merchandise coming in and customers coming in, and, oh, it was an attempt to do business during the lunch hour.

Q. (By Mr. Cobey) In other words, this was an attempt to give the employees an uninterrupted lunch hour? Is that right?

A. Yes, that's right.

Q. Now, am I to understand, Mr. Frauenberger, again speaking of Board's Exhibit 12-A, that in regard to the paragraphs numbered 15, 16 and 17, and 19 and 18 as well, that those practices were put into effect at that time?

A. Yes, sir. They were being worked out.

Q. And they represented a change from the practice prior to that time?

A. Yes, sir.

Q. In all cases [324]

A. Yes, sir.

Q. None of them were an embodiment of the existing practice?

A. Or they would be an embodiment of an existing practice and an improvement to them. In other words——

Q. But none of them were just a statement of the existing practice?

A. Oh, no. They were an improvement.